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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्र. 153]

भोपाल, सोमवार, दिनांक 15 मई 2023—वैशाख 25, शक 1945

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 15 मई 2023

फा. क्र. EP. 12, 19, 21/2019—चार—वि.निर्वा.—49.— माननीय उच्च न्यायालय द्वारा निम्नांकित निर्वाचन याचिकाओं के संबंध में पारित निर्णय बावत् भारत निर्वाचन आयोग की निम्नलिखित अधिसूचनाएं सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है:—

क्र.	निर्वाचन याचिका क्र.	आयोग की अधिसूचना क्र.	दिनांक
1.	12/2019	82/म.प्र./ (12/2019) 2023	26.04.2023
2.	19/2019	82/म.प्र./ (19/2019) 2023	26.04.2023
3.	21/2019	82/म.प्र./ (21/2019) 2023	26.04.2023

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली - 110 001

नई दिल्ली, तारीख- 26 अप्रैल 2023, 06 वैशाख, 1945 (शक)

अधिसूचना

सं.- 82/म.प्र./(12/2019)/2023- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 12 में मध्य प्रदेश उच्च न्यायालय के दिनांक 14.03.2023 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (यादवेन्द्र सिंह "जग्गू भैया" विरुद्ध राकेश गिरि एवं अन्य)।

आदेश से,
हस्ता./-
(अमित कुमार)
सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, Date: 26th April 2023, 06 Vaisakha, 1945 (Saka)

NOTIFICATION

No. 82/MP/(12/2019)/2023 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment/Order dated 14.03.2023 of the High Court of Madhya Pradesh in the Election Petition No. 12 of 2019 (Yadvendra Singh "Jaggu Bhaiya" Vs. Rakesh Giri & Others.).

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH,
PRINCIPAL SEAT AT JABALPUR

Election Petition No. 12 /2019.

(Election Petition under Section 80/80-A of the
Representation of Peoples Act, 1951)

PETITIONER

: Yadvendra Singh "Jaggu Bhaiya"

S/o Late Shri Sardar Singh

Aged about: 60 years

Candidate- Indian National Congress
43, Tikamgarh

Identified by Shri. Yadvendra Singh Jaggu Bhaiya
at 4.30 p.m. on 24/1/19
properly drawn up, within time and
stamped.

Accompanied by requisite number of
copies, list of documents, registered
F. and receipt of security deposit
₹ 100/-

R/o House no. 106/4

Ward No.3, Taal Darwaja,

Tehsil & Post : Tikamgarh

District: - Tikamgarh (M.P.)

Registrar (Judicial-II)

Versus

RESPONDENTS

: 1.

Shri Rakesh Giri

S/o Late Shri Nathuram

Aged about 42 years

(Returned Candidate from

Constituency No. 43 as a

Candidate of Bhartiya Janta

Party.)

R/o - Ward no. 15,

Vyogi Hari Ward,

Tehsil & Post : Tikamgarh

District: - Tikamgarh (M.P.)

2.

District Electoral Officer Cum

Collector, District: -

Tikamgarh, (M.P.)

2.

Shri Abhijeet Agrawal,

The then District Electoral Officer

& Collector, Tikamgarh District

Tikamgarh

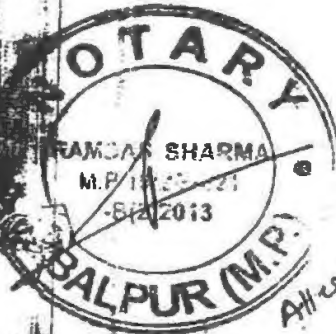
Presently posted at:

Deputy Secretary

M.P. Government,

Mantralaya, Vallabh Bhawan

Bhopal (M.P.)



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Pet Court
order dt. 13-2-2020
Bhargava



ELECTION PETITION UNDER SECTION 80/ 80-A OF THE
REPRESENTATION OF PEOPLES ACT, 1951

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ELECTION PETITION No.12 of 2019

Between:-

YADVENDRA SINGH "JAGGU BHAIYA" S/O
LATE SHRI SARDAR SINGH AGED ABOUT 60
YEARS CANDIDATE- INDIAN NATIONAL
CONGRESS, 43, TIKAMGARH
R/O HOUSE NO.106/4 WARD NO.3, TAAL
DARWAJA, TAHSIL AND POST ; TIKAMGARH
DISTRICT - TIKAMGARH (M.P.)

.....PETITIONER

(BY SHRI ARPAN PAWAR WITH SHRI HITENDRA SINGH AND
S.M.GURU-ADVOCATE)

AND

1. SHRI RAKESH GIRI S/O LATE SHRI
NATHURAM AGED ABOUT 42 YEARS
(RETURNED CANDIDATE FROM
CONSTITUENCY NO.43 AS A CANDIDATE OF
BHARTIYA JANTA PARTY)

2. SHRI ABHIJEET AGRAWAL, THE THEN
DISTRICT ELECTORAL OFFICER AND
COLLECTOR, TIKAMGARH DISTRICT
TIKAMGARH
PRESENTLY POSTED AS DEPUTY SECRETARY,
M.P. GOVERNMENT, MANTRALAYA, VALLABH
BHAWAN, BHOPAL (M.P.)

.....RESPONDENTS

(BY SHRI A.P.SHROTI WITH SHRI PRAMOD THAKRE AND
RAHUL RAWAT - ADVOCATE)

RESERVED ON : 1-2-2023

PRONOUNCED ON : 14.03.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Dinesh Kumar Paliwal, passed the following:

ORDER

This petition under Section 80 and 81 of the Representation of Peoples Act, 1951 (for short "the R.P. Act") has been filed by defeated candidate with the symbol of hand (Panja) calling in question the election of Shri Rakesh Giri (respondent No.1) a returned candidate with the symbol of Lotus (Kamal) from constituency No.43, Tikamgarh in the general election for Madhya Pradesh Legislative Assembly held in the year 2018.

2. It is not disputed that in the general election, 2018 for Madhya Pradesh Legislative Assembly, 17 candidates including respondent No.1 Rakesh Giri- the official candidate of Bhartiya Janata Party and Shri Yadvendra Singh- official candidate of Indian National Congress were in the fray. The polling was held on 28.11.2018. Counting of votes took place on 11.12.2018 and on the same day result was declared in which Shri Rakesh Giri/respondent No.1 secured 66958 valid votes and he was declared returned candidate. His nearest contestant Shri Yadvendra Singh "Jaggu Bhaiya"/petitioner secured 62783 votes.

3. The petitioner Yadvendra Singh "Jaggu Bhaiya" has challenged the election of respondent No.1 alleging that during his election campaign, he

was indulged in corrupt practice within the meaning of section 123(1)(A) (b) of the Act which constitute under Section 100(1)(b) and 100(1)(d)(iv) of the Act for declaring his election to be void. As many as five incidents of corrupt practice and one incident of non-publishing of criminal antecedent in the News paper as per circular dated 10.10.2018 by Election Commission of India have been alleged in various paragraphs of the petition which are summarized as under :-

(A) That wife of respondent No.1 was/ is holding the post of President of the Municipal Council, Tikamgarh and, therefore, respondent No.1 had deployed the entire machinery and employees of the Municipal Council to facilitate in his election as about 150 daily wages employees were deployed for canvassing in favour of respondent No.1 at the dictate of respondent No.1 and his wife. One Raviraj Gautam S/o Ramashankar Singh R/o of Chhatrasal Colony, Tikamgarh on 06.11.2018 and 09.11.2018 at about 2 P.M. had been asked by Pradeep Rajak, Abhishek Giri and Gajendra Giri Goswami, employees of the Municipal Council, Tikamgarh to cast his vote in favour of respondent No.1. The aforesaid government employees were assigned election duty by order dated 5.10.2018 of the Municipal Council, Tikamgarh. The petitioner had filed complaints (Annexures A-8 and A-9) on 11.11.2018 and 15.11.2018 with the Election Commission of India narrating the illegal act of respondent No.1 and his wife. Cognizance of the complaint was taken by the Election Commission and all the Municipal employees who were deployed for the purpose of canvassing in favour of respondent No.1, were removed from duty by the Municipal Council, Tikamgarh. The order dated 16.11.2018 is Annexure A-10 and A-11

(B) The respondent No.1 indulged himself in funneling cash, other gifts/ handouts and liquor to the voters through his influential local supporters. Agents of respondent No.1, on his dictate and with his consent, bribed voters by giving them cash and other articles like Kambal and Sarees obtaining a promise to vote for Bhartiya Janta Party. On the dictate of respondent No.1 and with his consent, his agent namely Gajendra Giri Goswami came in a TATA Safari SUV and distributed Kambal and Saree at Village Patha, District Tikamgarh on 26.11.2018 between 7 PM to 8 PM to Rajesh Kumar Rai S/o Jairam Rai R/o village Patha and asked to vote in favour of respondent No.1 by pressing the button of Lotus in the EVM. The incident was witnessed by Kamal Singh S/o Babu Raja Thakur, R/o village Jatouwa Khass Patha and Rahul Mishra S/o Late Shri Rajendra Kumar Mishra. The incident of distributing Kambal and Sarees was videographed by Kamal Singh through his Mobile Vivo 07 Plus number 8120051010 (IMEI 1:- 866066036156838, IMEI 2:- 866066036156820. The incident was immediately informed to the concerned authorities and election office of the petitioner by Rahul Mishra and Kamal Singh. The video recording is Annexure A-13 and the written complaint made by Rahul Mishra is Annexure A-14.

(C) That on 25.11.2018, between 7 PM to 9 PM, on the dictate and with the consent of respondent No.1, his agents, namely Narendra Kumar Rai S/o Nathuram and Bhagwan Das Prajapati @ Banti S/o Shyamlal Prajapati R/o Rajkamal Akhara, Tikamgarh who is also working at the departmental store, namely "Grihasthi" owned by respondent No.1 distributed a currency note of Rs.2000/- denomination and liquor quarts in the form of bribe to one Firoz Khan S/o Yusuf Khan R/o of Ward No.12, village Badagaon between 7 PM to 9 PM. The said incident was

witnessed by Dhanendra Singh S/o Kundan Singh R/o Tall Darwaja, Tikamgarh. Dhanendra Singh narrated the said incident of bribery to the petitioner on 26.11.2018 at his election office. The voters were bribed to cast their votes in favour of respondent No.1 candidate of **Bhartiya Janata Party**. On 25.11.2018, during search of a vehicle bearing registration No. M.P. 36-C-3046 (Maruti Alto Car) owned by Shri Narendra Kumar Rai who was the agent/ supporter and also the employee working in the establishment run by respondent No.1 in the name of "Grihasthi" departmental store, Rs.4,70,000/- cash was seized near Dhanushdhari Mandir Badagaon Dhasan, Tikamgarh. The cash seized belonged to respondent No.1 and was being taken to be used at different villages for the purpose of bribing the voters to cast their votes to respondent No.1. The incident was witnessed by Shri Rahul Fanendra S/o Ajay Kant Fanendra, agent of the petitioner. The said incident was also videographed through Mobile handset i.e MI-Note 4 (IMEI No.866467034886787 and 866467034886795) having mobile No. 9575131993 and 9131973376 on 25.11.2018. A copy of seizure memo, Panchnama and Supurdgi memo are Annexure A-15, A-16 and A-17.

(D) That on 18.11.2018 at 12 noon in utter violation of the mandate of Section 123(3) of the Act, sister of respondent No.1, namely, Kamini Giri who also happens to be the President of Janpad Panchayat, Tikamgarh, with the consent of respondent No.1 organized religious feast (Bhandara) and openly appealed that she is organizing the Bhandara at the instructions of respondent No.1 and requested the voters who were the devotees of Temple Hanumanji Mandir situated at village Badagaon Dhasan to cast their votes to the Bhagwa Party candidate i.e his brother by pressing the button of Lotus. The said incident was witnessed by Jaipal Singh S/o Randheer Singh R/o village Umari, Tahsil Badagon,

Tikamgarh. The said witness was the supporter of the petitioner, therefore, on 19.11.2018, he intimated the said fact to the petitioner and accordingly a complaint was made through election agent in the office of Returning Officer, Tikamgarh. Kamini Giri Goswami herself uploaded the videos of the said (Bhandara) corrupt practice in her facebook profile. The complaint dated 19.11.2018 is Annexure A-18.

(E) The EVM machines of polling booths No.43- Tikamgarh, 57- Tikamgarh, 141-Dharjai, 154-Sundarpur, 165- Pahadi Tilwaran, 169- Minora and 182-Ashthoun Khas were closed before the scheduled time at the instructions of respondent No.1 which deprived the voters from casting their votes in favour of the petitioner. In this regard pleadings have been made in para-19,20 and 21 of the petition.

(F) The EVM of booth No.41,49 and 220 were changed at the time of counting by the Returning Officer under the influence of respondent No.1.

(G) Against respondent No.1 as many as four criminal cases were pending at the time of filling the nomination form. However, he has not taken pain to disclose the fact of criminal cases pending against him by publishing in the Newspaper as mandated by law. Thus, the returned candidate has deliberately concealed his criminal record by not disclosing the criminal cases in the election form and failed to publish the same as mandated by law.

4. It is averred that the aforesaid acts on the part of respondent No.1 amounts to corrupt practice under various clauses of section 123 of the Act read with section 100(1)(b) and 100(1)(d)(iv) of the Act. Therefore, the election of returned candidate is liable to be declared void.

5. The respondent No.1 in his written statement denied that his wife had deployed the entire machinery and 150 daily rated employees of the Municipal Council to facilitate the election of respondent No.1 and Bhartiya Janta Party. It was also denied that on 06.11.2018 and 09.11.2018 Ravi Raj Gautam of Chhatrasal Colony had been asked by Pradeep Rajak, Abhishek Giri and Gajendra Giri Goswami to cast his vote in favour of respondent No.1. It was submitted that Ravi Raj Gautam is a close relative of petitioner Shri Yadavendra Singh, therefore, his name is mentioned to cook false ground. It was submitted that the duties and work are assigned to the municipal employees by the Chief Municipal Officer and respondent No.1 has no role in assignment of duties to the employees. No cause of action of corrupt practice is made out. It was denied that all the employees were canvassing at the dictate of respondent No.1 and were removed from the election duty. The document Annexure A-12 does not say that employees were canvassing in favour of respondent No.1. They were terminated since they were not discharging their duties effectively. The alleged employees are daily wagers and not government employees. The alleged photographs have been uploaded from the facebook page of Madhur Agnihotri, the photographs are old photographs and were taken prior to election when respondent No.1 was inspecting the complaints of citizens of Tikamgarh. In these photographs no banner or flag of party is seen. The said photograph is of 19.6.2018 almost five months prior to the election.

6. Respondent No.1 has specifically denied about indulging in funneling cash, gifts, handouts and liquor to the voters through his influential local supporters. It was submitted that no Kambal (blankets) and Sarees were distributed to the voters obtaining a promise to vote for Bhartiya Janata Party by pressing symbol depicting Lotus. The allegation

that his agent, namely, Gajendra Giri Goswami came in TATA Safari SUV and distributed Kambal and Saree at village Patha on 26.11.2018 between 7 PM to 8 PM for securing vote in favour of respondent No.1 is denied. It is stated that Gajendra Giri was not the agent of respondent No.1 and he has never consented him to commit any corrupt practice. No Kambal and Saree were distributed to Rajesh Kumar Rai R/o village Patha on 26.11.2018. No such incident had happened. The CD annexed as Annexure A-13 does not support the aforesaid contents. A false story is concocted by the petitioner. It is specifically denied that Narendra Kumar Rai and Bhagwandas Prajapati were his agents and were working in the departmental store of respondent No.1. It is submitted that a currency note of Rs.2000/- denomination and liquor quarts in the form of bribe to the voters of village Badagaon were never distributed with the consent and on the dictate of respondent No.1. It is submitted that Bhagwandas Prajapati himself was an independent candidate from constituency No.43. He has no concern or relation with Narendra Kumar Rai and Bhagwandas Prajapati. The allegations of seizure of case are against Bhagwandas Prajapati who himself was a candidate and had committed corrupt practice. Bhagwandas Prajapati being a necessary party has not been arrayed as respondent and on this ground alone petition is liable to be dismissed.

7. It is averred that Narendra Kumar Rai and Bhagwandas Prajapati had no nexus with respondent No.1 nor they were the agent of respondent No.1. He has neither dictated nor consented them to commit any corrupt practice. If any money has been seized from these persons, respondent No.1 cannot be held liable for their act. It is contended that money seized from Narendra Kumar and Bhagwandas Prajapati was found to be genuine and later-on the same was refunded to them which shows that all

the allegations levelled by the petitioner in the election petition are false and manufactured. The video recording annexed in support of aforesaid contention does not support the story of the petitioner. No cause of action is disclosed in this regard.

8. It was submitted that no incident of organizing religious feast on 18.11.2018 had taken place in Temple Hanumanji Mandir situated at village Badagaon Dhasan and no appeal was made to the voters to cast their votes to the Bhagwa party and in favour of respondent No.1 by pressing the button of Lotus. The document annexed with the petition has been downloaded by the facebook ID of Ms. Kamini Giri and the title which reflects in that photo is "*Nagar Panchayat Badagaon Mein Shrimati Kamini Giri Goswami द्वारा जन्मसमर्पण किया गया जिसमें जनता का आशीर्वाद स्नेह प्राप्त हुआ और मंदिर परिसर द्वारा भक्तों के लिए प्रसाद का आयोजन किया गया*". From the photographs it does not appear that Bhandara was organized by Ms. Kamini Giri. It was organized by the Temple Administration. Kamini Giri was the President of Janapad Panchayat, therefore, she had visited to attend the Bhandara organized by the Temple and not for campaigning for respondent No.1. Respondent No.1 had not directed her to canvass for him nor she was his election agent. As both the candidates are Hindu, no question to appeal for vote on the basis of religion is attracted.

9. It is submitted that averments regarding voting machine of different polling booth mentioned in the table given in the petition from S.No.1 to 7 were closed before the prescribed time i.e 5.00 P.M. are false and baseless. It is contended that voting machine bears only two time i.e Poll Start Time (PST) and Poll End Time (PET). The last vote cast by the voter was prior to 5 P.M., therefore, the aforesaid machines are showing

the time prior to 5.00 P.M. as the machine shows Poll End Time (PET) same cannot be termed as the closing time of voting machines. It is further submitted that at the time of closing of EVMs the polling agents of petitioner and other parties were present and nobody had taken the objection about closing of the machine prior to time.

10. Shri Abhijeet Agrawal, District Returning Officer did not direct closing of the EVM before the prescribed time to extend illegal favour to respondent No.1. It is submitted that polling agent of respondent No.1, namely, Pappu Lodhi of polling booth No.141, Shri Ramkishan Lodhi of polling booth No.154, Shri Pancham Yadav of polling booth No.165, never with the consent of respondent No.1 compelled the polling officer of said booths to close down the EVM to refrain the voters of the petitioner from casting their votes. No such incident had happened. It is contended that said issue of constituency No.43 Tikamgarh was taken-up and the Additional Chief Electoral Officer has issued a letter bearing No.15/23/2019 dated 16.04.2019 clarifying the Poll End Time and Poll Start Time. Another letter bearing No.51/8/7/2019-EMPS dated 23.05.2019 was issued by the Under Secretary, Election Commission of India stating Poll End Time (PET) indicates the time stamp of last vote cast and not the time of pressing close button. It is submitted that since there is requirement of law that the voters available in the polling station to cast the vote till 5 P.M. are permitted to cast vote even after 5 P.M., therefore, this mechanism is added to the machine to know when the last vote was casted. No such complaint was ever made before the Presiding Officer, Returning Officer, District Electoral Officer or Election Observer regarding closing of EVM machine before schedule time. Thus, all the allegations in this regard are false and frivolous.

11. It was submitted that the allegations regarding polling booth No.141,154,165,169 and 182 that some of the voters could not cast their votes in favour of the petitioner on account of closing of EVM machine prior to schedule time are specifically denied. The allegations made in para 22,23,24 and 25 of the petition were specifically denied as the petitioner has narrated the facts of the year 2017, whereas, M.P. State Legislative Election, 2018 started from 09.11.2018. Therefore, same are of no avail. All the allegations made against the District Electoral Officer Cum Collector are false and fictitious as no complaint was ever made by the petitioner against him. The Collector is an administrative officer and he works as a neutral person without taking favour of any candidates. Petitioner is an Ex-Minister and, therefore, he wants to dominate the election machinate and as he could not dominate him, he made a false and frivolous complaint to pressurize the election officer. All other allegations made against the Returning officer have been specifically denied. Permit of the vehicle was issued as per the direction of the Election Commission and all the allegations in this regard have been specifically denied.

12. It is submitted that petitioner had disclosed all the cases pending against him as per mandate of Supreme Court as well as directions of the Election Commission of India in an affidavit filed by him alongwith nomination form and also published the details of aforesaid criminal cases pending against him as per Format-C in the Newspaper. The aforesaid publication was made in the daily issue of Lok-Desh Newspaper dated 19.11.2018, 21.11.2018 and 23.11.2018. Apart from that, pendency of criminal cases was telecast in Sadhna News channel. After paying the requisite fee to Newspaper as well as Sadhana Channel and the same was informed to the concerned Election Officer. It is

submitted that the circular Annexure A-37 dated 10.10.2018 issued by the Election Commission of India provides for submitting the details regarding publication of criminal cases in Newspaper and News Channel in Format C-2 and if any candidate fails to do so, the Returning Officer, is required to give written reminder about the directions for publishing declaration about the criminal cases in Format C-3. But no such reminder was ever given to the petitioner as he had published all criminal cases pending against him and had also submitted copy of newspaper publication to the Returning Officer. The pendency of criminal cases was also informed to the Bhartiya Janata Party through E-mail and later-on the party had displayed the details of all the candidates having criminal record in its official Website including the details of respondent No.1. The same is annexed as Annxsure R/1/8.

13. It was submitted that respondent No.1 did not suppress any material fact and has not violated any provision of law. The cases pending against respondent No.1 at S.No. 2 to 4 in para 35 pertains to the cases under Municipality Act, 1961 and are not criminal cases. Petitioner was not required to give the description as well as paper publication even though he got published the details of aforesaid pending cases in the newspaper and also displayed the same through telecast in Sadhna News Channel.

14. Respondent No.1 has specifically denied that any EVM machines was changed on the dictate of respondent No.1. It was additionally submitted that the petitioner is lacking the cause of action and it does not contain any material particulars for the alleged corrupt practices as the election petitioner has not disclosed specific date, time and name of the persons involved in the corrupt practice. The allegations made in the

election petition are general and vague. Respondent No.1 has not committed any corrupt practice nor consented with any of his election agent to commit corrupt practice. Since the petitioner has lost the election, therefore, due to his political grudges, he has filed the present election petition having no substance. Thus, respondent No.1 has prayed for dismissal of the election petition with cost.

15. On 22.01.2020, on the basis of pleadings of the parties, following issues were framed :-

NO	ISSUES	FINDINGS
1	Whether the respondent No.1/Returned candidate has taken assistance of the employee of Municipality, Tikamgarh for canvassing for his election and thus committed corrupt practices ?	Not proved
2	Whether the respondent No.1/Returned candidate/ his supporters have distributed blankets, sarees and cash to the voters to caste vote in his favour and thus committed corrupt practices ?	Not proved
3	Whether the respondents No.2 and 3 under the instructions and on behalf of respondent No.1/Returned Candidate has closed the polling (EVMs) of polling booth Nos. 43, 57, 141, 154, 165, 169 and 182 before the scheduled time with the intention to restrain the voters to cast their votes, thus extended undue favour to the returned candidate and violated the provisions of the Representation of Peoples Act, 1951 and rules made thereunder ?	Not proved
4	Whether the respondent No.1/Returned candidate has deliberately concealed his criminal record by non-	

	disclosing criminal cases in the election form and also failed to publish the same mandated by law ?	Not proved
5	Whether the EVM of booth Nos. 41, 49 and 220 were changed at the time of counting, thereby materially affected the election ?	Not proved
6	Whether the aforesaid conduct on the part of respondent No.1/his electoral agents/his supporters falls under the provisions of corrupt practice and therefore liable to be set aside ?	Not proved
7	Relief and costs ?	Relief granted in part. Respondent No.1 to pay their own cost.

ISSUE NO. 1

16. It is averred in para 10 to 13 of the Election petition that as many as 150 daily wages employees of Municipal Council, Tikamgarh were engaged for canvassing in favour of respondent No.1 at the dictate of respondent No.1 as his wife was holding the post of President, Municipal Council, Tikamgarh. It is further alleged that employees of Municipal Council namely Pradeep Rajak, Abhishek Giri, Gajendra Giri Goswami had asked some of the voters, particularly to Raviraj Gautam S/o Ramashankar Singh on 06.11.2018 and 09.11.2018 to cast his vote in favour of respondent No.1. It is further alleged that complaint was instituted on 11.11.2018 and 15.11.2018 with the Election Commission of India narrating the illegal act of respondent No.1 and his wife. Cognizance was taken by the Election Commission and employees who were canvassing in favour of respondent No.1 were removed from election duties.

17. The petitioner in order to prove his case, as regards issue No.1 has adduced evidence of Yadvendra Singh (PW-1) and Raviraj Singh (PW-2) and has relied on Exhibit P/1.

18. Yadvendra Singh (PW-1) has deposed that at the time of election Laxmi Giri, wife of returned candidate/respondent No.1 was the President of Municipal Council, Tikamgarh. On 06.11.2018 and 09.11.2018 at the dictate of Rakesh Giri one meeting of the 150 daily wages employees was called and in it Gajendra Giri and Abhishek Giri had told employees that they have been employed by Laxmi Giri, if Yadvendra Singh wins the election then they will be removed from the services. It is also his evidence that he had made complaint Exhibit P/1. In para 26 of his evidence Yadvendra Singh has admitted that he had made complaint Exhibit P/1 on 11.11.2018 and in it, it is mentioned that Gajendra Giri and Hari Giri along with Municipal Council President Laxmi Giri have canvassed at Ward No.4, Taal Darwaja. He has admitted that last date for scrutiny of the nomination paper was 12.11.2018 and last date for withdrawal of nomination was 14.11.2018. He has denied the suggestion offered by learned counsel for respondent No.1 that daily wages employees are not the government employees. He has admitted that he had made complaint only against two employees. He has admitted that in his petition it is nowhere mentioned that on 10.11.2018 two daily wages employees were canvassing for Rakesh Giri. He has further admitted that in his petition he has not given details of all 150 employees who had canvassed for respondent No.1. As far as truthfulness and reliability of the evidence of Yadvendra Singh (PW-1) is concerned, he is a hearsay witness as his source of giving such information is Raviraj Singh Gautam. Yadvendra Singh (PW-1) had not seen any daily wages

employee of Municipal Council, Tikamgarh canvassing for respondent No.1.

19. Raviraj Singh Gautam (PW-2) has deposed that he is resident of Chhatarsal Colony. On 06.11.2018 and 09.11.2018 at around 2:00-2:30 PM Pradeep Rajak, Abhishek Giri, Gajendra Giri Goswami reached in his colony and asked the people that they have been sent by Rakesh Giri and requested to cast their vote in favour of Rakesh Giri for development of the colony. He further stated that on 09.11.2018, he had informed the same to Yadvendra Singh. In cross-examination, this witness has admitted that in his Adhar Card, his name is not mentioned as Raviraj Singh Gautam and his address is mentioned as Baikunth Krishi Colony. This witness further admitted that he had not made any complaint against Pradeep Rajak, Abhishek Giri and Gajendra Giri Goswami about making appeal to residents of colony to cast their vote in favour of Rakesh Giri. As far as the evidence of Raviraj Singh Gautam (PW-2) is concerned, his evidence does not inspire confidence as he is not Raviraj Singh Gautam. As per his own admission in his Adhar Card, his name is not mentioned as Raviraj Singh Gautam and his address is mentioned as R/o Baikunthi Krishi colony and not that of Chhatarsal colony whereas as per the evidence of Yadvendra Singh (PW-1) and as per the averments made in the election petition Raviraj Gautam, S/o Ramashankar Singh Gautam, R/o Chhatarsal Colony, Tikamgarh along with other residents of colony was asked by the employees of Municipal Council to cast their vote in favour of respondent No.1. As petitioner has not adduced Raviraj Singh Gautam, R/o Chhatarsal Colony as witness, no reliance can be placed on the evidence of Raviraj Singh (PW-2). Likewise no reliance can be placed on the uncorroborated hearsay evidence of Yadvendra Singh (PW-1). Thus, it is concluded that petitioner by producing cogent and reliable

evidence could not prove that any employee of the Municipal Council, Tikamgarh had canvassed on 06.11.2018 and 09.11.2018 for the returned candidate in Chhatarsal Colony, Tikamgarh and had appealed residents of colony to cast their vote in his favour.

20. Exhibit P/1 is an application made to District Returning Officer by petitioner Yadvendra Singh on 11.11.2018 and in this application Exhibit P/1, it is alleged that Gajendra Giri and Hari Giri had canvassed along with Laxmi Giri in Ward No.4 on 10.11.2018 and a photo of the same was taken, but no such photograph was produced in the evidence. It also cannot be overlooked that as per complaint Exhibit P/1 canvassing was made on 10.11.2018, while as per the evidence of Yadvendra Singh (PW-1) and Raviraj Singh (PW-2) canvassing was made on 06.11.2018. Thus, it is clear that evidence of Yadvendra Singh (PW-1) and Raviraj Singh (PW-2) does not match with the date mentioned in Exhibit P/1. Hence, no reliance can be placed on their evidence. There is material discrepancy in testimonies of Yadvendra Singh (PW-1) and Raviraj Singh (PW-2) and alleged complaint Exhibit P/1 as regards the date of canvassing. Raviraj Singh Gautam, S/o Ramashankar Singh, R/o Chhatarsal Krashi Colony has not been produced for evidence as Raviraj Singh (PW-2) who has been adduced in evidence is the resident of Baikunth Krashi Colony, Tikamgarh and not the resident of Chhatarsal Krashi Colony. Thus, from the evidence on record, it is not found proved that on 06.11.2018 at around 4:00 PM daily wages employees namely Pradeep Rajak, Abhishek Giri and Gajendra Giri Goswami along with Laxmi Giri had canvassed for respondent No.1 in Taal Darwaja, Ward No.4 and had asked voters particularly Raviraj Singh Gautam to cast vote in favour of returned candidate respondent No.1.

21. Issue No.1 is decided accordingly.

ISSUE NOs. 2 and 6

22. These issues relate to corrupt practice and the averments in this regard are contained in para 14, 15, 16 and 17 of the Election Petition and it is alleged that respondent No.1, returned candidate and his supporters had distributed Blankets, Sarees and Cash to the voters to cast their votes in favour of returned candidate. In the aforementioned paragraphs details with date, time and name of the persons who distributed Blankets, Sarees and Cash at dictate and direction of respondent No.1 to allure the voters to cast their votes in favour of returned candidate have been mentioned.

23. Yadvendra Singh (PW-1) in his evidence deposed that on 25.11.2018 Narendra Rai, Bhagwandas Prajapati and Sanjay Gupta had distributed cash near Dhanushdhari Temple at Village Dhasan and a currency note of Rs.2000/- was given to Firoj Khan and he was asked to cast his vote in favour of respondent No.1. It is also his evidence that on 26.11.2018 Gajendra Giri along with other persons who are daily wages employees distributed Blanket, Sarees and Cash. The act of distribution of aforesaid articles was videographed by Kamal Singh and complaint was made by Rahul Mishra. Blankets and Sarees were seized by the Police. In para 28 of his cross-examination, Yadvendra Singh (PW-1) has admitted that he has not given any proof regarding organizing of Bhandara (religious feast) by Kamini Giri. He further admitted that he has made no pleading regarding distribution of Sarees and clothes in the Bhandara. He further admitted that in page 18 of his petition he has not

mentioned the name of Rakesh Giri and has simply mentioned that voters were asked to cast their votes in favour of Bhagwa Party.

24. In para 29 of cross examination, he has admitted that in his petition he has made no pleading about making oral complaint on telephone. He has admitted that in election Bhagwandas was one of the candidates. He admitted that he has no knowledge if Bhagwandas Prajapati, S/o Shyamlal and Bhagwandas whose name is mentioned in para 4 of the petition are same person. He admitted that he has no knowledge if money seized by the Police belonged to Bhagwandas Prajapati and he was distributing the same along with Narendra Rai. He admitted that cash and vehicle were seized from Narendra Kumar Rai. He admitted that he has not mentioned the name of Sanjay Gupta in his petition and made no complaint against Bhagwandas Prajapati or Narendra Rai. He admitted that he had not asked Firoz Khan to make complaint about receiving of money. He admitted that in his petition he has nowhere mentioned that Sanjay Gupta is the brother-in-law of Uma Gupta/wife of the Rakesh Gupta, partner in firm named "Grashthi". He has further admitted that Rahul Mishra had made complaint on phone only and he had not made any complaint in writing. In so far as the reliability of the evidence of Yadvendra Singh (PW1) is concerned, he is not an eye witness of the aforesaid incidents. He is merely a hearsay witness. Therefore, no reliance can be placed on his hearsay evidence.

25. As far as the evidence regarding organization of Bhandara at Hanumanji temple by Kamini Giri is concerned, Jaipal Singh Bundela (PW-6) has deposed that on 18.11.2018, he had gone for Darshan at Hanumanji Temple, Badagaon, there a Bhandara was going on. Kamini Giri was distributing meal and prasad and was appealing to the devotees cast their vote in favour of Rakesh Giri and Bhagwa Party. According to

him on 19.11.2018 he had informed the same to Yadvendra Ji. In cross-examination, this witness Jaipal Singh (PW6) has admitted that he is not resident of Badagaon. He is resident of Village Umri which is almost 9-10 km away from Badagaon. He further admitted that he cannot say as to who had organized the Bhandara. He stated that Kamini Giri was there. He admitted that regarding Bhandara, he had made no complaint to Badagaon Police and election office. He has clearly admitted that he is an Indian National Congress Worker. He has stated that he had made no complaint to anyone except Yadvendra Singh. The evidence of Jaipal Singh Bundela (PW-6) is not supported by evidence of any other person belonging to Badagaon. No cogent and reliable proof except oral evidence of Jaipal Singh Bundela (PW-6) has been furnished to prove the factum of organization of Bhandara by Kamini Giri. The evidence of Jaipal Singh Bundela (PW6) is vague and general in nature. He is worker of Indian National Congress party. Therefore, in absence of any cogent and reliable evidence in this regard no reliance can be placed on his evidence as he is an interested witness.

26. In so far as the allegation of distribution of Blankets and Sarees at Village Patha, by Gajendra Giri Goswami in Tata Safari SUV vehicle on 26.11.2018 between 7-8 PM is concerned, the petitioner has not produced any documentary or oral evidence to prove that Gajendra Giri Goswami was the agent of returned candidate. In this regard evidence of Rahul Mishra (PW-5) has been adduced. He has deposed that on 26.11.2018 he in the vehicle of independent candidate Ajay Pratap Singh was going towards Badagaon to Tikamgarh. In Tata Safari vehicle three piles of blankets were found kept on the rear door of the vehicle and same blankets were being distributed by Gajendra Giri and he was telling to the people that these blankets have been sent by Rakesh Giri and you have to

cast your vote in favour of Bhartiya Janta Party. When he made a call to the Police Gajendra Giri along with Tata Safari vehicle left the village. Further he could not take the blankets piles with him and same were seized by the Police Tikamgarh. He had made complaint to the Election Commission.

27. In his cross-examination, Rahul Mishra has stated that he had not seen registration number of the Tata Safari vehicle by which blankets were being distributed. It is surprising that this witness had seen Gajendra Giri, Tata Safari Vehicle, blanket piles but could not see registration number of the vehicle. No other witness has supported the evidence of this witness Rahul Mishra. In his cross-examination, Rahul Mishra has admitted that he had given oral information to the Police and written complaint was made by him. This witness Rahul in para 2 of his cross-examination stated that he had left his complaint on the desk of the Election Officer. The petitioner has not filed copy of any such written complaint made by Rahul Mishra. This witness has admitted that he is Xth pass and knows how to send E-Mail but he had not made any complaint to Election Commission through E-Mail. He has admitted that he had informed Yadvendra Singh about distribution of Blankets and Sarees by Gajendra Giri after a long gap of declaration of the final result of elections. This witness Rahul Mishra in para 3 of evidence stated that he had given a copy of the complaint made by him to Election Commission to Yadvendra Singh. It is noteworthy that no such complaint has been filed with the petition by petitioner Yadvendra Singh.

28. Rahul Mishra (PW-5) has admitted that he had not prepared any video of Gajendra Giri Goswami distributing blankets and sarees. When Exhibit D/I document was shown to him, he has admitted that in Exhibit D/1 name of Gajendra Giri is not mentioned and it has not proved that it

was given to the Returning Officer. Rahul Mishra (PW-5) is an unreliable witness as his evidence does not find corroboration from the evidence of any other witness. It is worth mentioning that in para 14 of the election petition, it has been specifically pleaded that Blankets and Sarees were distributed to Rajesh Kumar Rai, S/o Jayram Rai, resident of Village Patha, Tehsil and District Tikamgarh and incident was witnessed by Kamal Singh, S/o Babu Raja Thakur and he had videographed the incident through his mobile, but aforesaid witnesses Rajesh Kumar Rai and Kamal Singh were not produced in evidence by the petitioner. Thus, petitioner has utterly failed to prove the fact that Blankets or Sarees were distributed by Gajendra Giri to Rajesh Kumar Rai or any other voters of Village Patha and they were asked to cast their votes in favour of respondent No.1 or Bhagwa Party.

29. In this case petitioner has not only failed to examine Kamal Singh, S/o Babu Raja Thakur but has also failed to produce any videography of the incident of distribution of Sarees or Blankets by Gajendra Giri at village Patha. On a perusal of Exhibit D/1, it is apparent that name of Gajendra Giri is not mentioned in it and it does not bear seal or signature of the office of Returning Officer. Thus, no reliance can be placed on the false and unbelievable evidence of Rahul Mishra (PW-5).

30. In para 15 to 17 of the Election Petition, averments have been made that on 25.11.2018 between 7:00 to 9:00 PM on the dictate and with the consent of respondent No.1 his agent namely Narendra Kumar Rai and Bhagwandas Prajapati @ Banti who also works in the Departmental Store namely 'Grashthi' owned by respondent No.1 distributed Rs.2000/- denomination note as a bribe to the voters of Village Badagaon, Dhasan. They had distributed a currency note of Rs.2,000/- denomination to one Firoz Khan, resident of Ward No.12, Badagaon Dhasan between 7 to 9

PM in Badagaon and said incident was witnessed by Dhanendra Singh, S/o Kundan Singh who had narrated such incident of bribery to the petitioner on 26.11.2018. It is also averred that on 25.11.2018 during search of Maruti Alto car bearing registration No. MP-36-C-3046 belonging to Narendra Kumar Rai, an amount of Rs.4,70,000/- was seized near Dhanushdhari Temple, Badagaon Dhasan, Tikamgarh. In this regard, the evidence of Yadvendra Singh (PW-1) is evidence of a hearsay witness as he had not seen anyone distributing the currency note to Firoz Khan.

31. Firoz Khan (PW3), in his evidence, has deposed that on 25.11.2018 between 8 to 9 PM he was going towards his house from Dhanushdhari chouraha, there a mob of 10-15 people was standing. He had seen three persons traveling in a vehicle. Out of these three persons, one came near him and asked him to receive Rs.2,000/- denomination currency note and said that same is being given by Rakesh Giri and you have to cast your in favour of Bhartiya Janta Party, that time his friend Dhanendra Singh was also present there. In the meantime, Police reached there, due to which they left the place without narrating anything to anyone. The evidence of Firoz Khan (PW-3) finds corroboration from the evidence of Dhanendra Singh (PW-4). Dhanendra Singh (PW-4) has deposed that three persons had given some money to his friend Firoz Khan and had stated that this money has been sent from BJP candidate Rakesh Giri and you have to vote for him. Hearing Police siren Firoz Khan came to him and asked him about the persons who had given money. He had informed him that these persons were Narendra Kumar Rai, Bhagwandas Prajapati and Sanjay Gupta of Tikamgarh. In his cross-examination, Firoz Khan (PW-3) has admitted that the person who had given him money had not enquired him about his being voter of Tikamgarh Assembly Seat. He has admitted that he had received the money. He further stated that he had left the place

because Police has reached there. He has admitted that he had not made any complaint to the Police or any other authority about distribution of money in election.

32. In cross-examination, Firoz Khan (PW-3) has clearly admitted that Dhanendra Singh and Yadvendra Singh both are the resident of Taal Darwaja, Tikamgarh. Dhanendra Singh (PW-4) in his cross-examination has stated that petitioner Yadvendra Singh is not his relative, though they both are from Bundela community. He has stated that on the day of incident, he was returning from his wife's house at Karitola village in Uttar Pradesh. He has admitted that place of alleged incident Badagaon Dhasan was not on his way back to home. He has admitted that Firoz Khan is his old friend. This witness has stated that he and Firoz Khan both had not made any complaint to the District Election Officer about distribution of money on behalf of returned candidate. He has stated that factum of distribution of money, is being disclosed by him for the very first time before the Court. He has admitted that he was asked by petitioner Yadvendra Singh to depose the same in Court. In so far as the veracity of evidence of Firoz Khan (PW-3) and Dhanendra Singh (PW-4) is concerned same does not inspire confidence as they did not make any complaint to Police/Returning Officer and Election Commission of India about distribution of currency note of Rs.2,000/- denomination by any person at behest of respondent No.1. Hence, so far as the evidence of Firoz Khan (PW-3) and Dhanendra Singh (PW-4) is concerned, same does not appear truthful. It is worthwhile to mention here that Dhanendra Singh (PW-4) and petitioner both are from same community and are resident of same Mohalla in Tikamgarh.

33. It is pertinent to mention here that Village Badagaon Dhasan where alleged incident of distribution of currency money is stated to have taken

place was not on Dhanendra Singh's (PW-4) way back to home from his wife's house at village Karitola in Uttar Pradesh. Dhanendra Singh (PW-4) has not offered any satisfactory clarification as to how he reached at village Badagaon Dhasan which is situated on Damoh - Tikamgarh highway. Thus, Firoz Khan (PW-3) and Dhanendra Singh (PW-4) appears to be manufactured witnesses. The testimony of Firoz Khan (PW-3) and Dhanendra Singh (PW-4) does not find corroboration from evidence of any other independent witness, while according to them 10-15 persons were present on the spot at the time of distribution of money, but none of these persons have been named in the petition and none of these persons were produced before Court as witnesses. There are material discrepancy in the testimony of Firoz Khan (PW-3) and Dhanendra Singh (PW-4) as regards the persons to whom currency notes were distributed by Narendra Kumar Rai and Bhagwandas Prajapati. It is not the evidence of Dhanendra Singh (PW-4) that he too was offered any money by those persons for casting his vote in favour of Bhagwa Party. Firoz Khan (PW-3) and Dhanendra Singh (PW-4) have not disclosed the name of any other persons to whom currency notes were distributed and were asked to cast their votes in favour of respondent No.1. Therefore, their bald and general statement that three persons gave a currency note of Rs.2,000/- denomination to Firoz Khan being bereft of specific details carries no credibility, particularly in the background of their testimony that only Firoz Khan was recipient of currency note. The petitioner has not produced any other person who can testify that he too was offered a currency note of Rs.2,000/- by three persons to cast his vote in favour of respondent No.1 Rakesh Giri and Bhagwa Party.

34. Thus, the testimony of Firoz Khan (PW3) and Dhanendra Singh alleged recipient of currency note and Dhanendra Singh (PW-4) so called

eye witness who is resident of the petitioner's mohalla is not at all inspiring because it suffers from a number of improbabilities, infirmities and anomalies which makes the same unbelievable and unreliable. Hence, same cannot be relied upon.

35. In para 28, 29 and 30, petitioner has made allegations against respondent No.2 Abhijeet Agrawal, District Electoral Officer-cum-Collector about deleting his and his family members' name from the Electoral Roll of the Legislative Assembly Constituency No.43, Tikamgarh dated 31.07.2018, though earlier their names were shown in the voter list published on 19.01.2018. It is averred that after making a complaint by the petitioner the name of the petitioner and his family members were included in the Electoral Rolls at Serial No.833, 834 and 835 in the voter list dated 27.09.2018.

36. Yadvendra Singh (PW-1) in para 10, 11, 12 and 13 of his evidence has deposed that since 03.10.2017 and onwards Collector Abhijeet Agrawal was prejudiced with him and owing to that his and his family members names were deleted from the voter list. In para 33 of his cross-examination, he has admitted that voter list is revised in every six months. His name is published in voter list dated 19.01.2018. He further admitted that his name was not published in voter list dated 21.07.2018 but was published in voter list dated 27.09.2018. He has admitted that he has not produced any copy of the complaint submitted by him to the State Election Commission.

37. As far the allegations of the petitioner about deleting of his name from voter list dated 21.07.2018 are concerned, same are not material as in the voter list which was published on 27.09.2018 his and his family members names were found included. The aforesaid incident has taken place before commencement of election process. Therefore, only on the

basis that names of petitioner and his family members were not published in voter list dated 21.07.2018, it cannot be inferred that District Returning Officer/Collector was having prejudices against the petitioner and he in any way materially affected the election process.

38. No other cogent and reliable evidence has been produced to prove that Collector/Returning Officer Abhijeet Agrawal during election process did anything against the petitioner which materially affected the election process. Therefore, in this regard, no force is found in the argument advanced by learned counsel for the petitioner.

39. The law is well settled that the allegation with regard to corrupt practice is a serious allegation and the standard of proof is akin to criminal charge where allegations are required to be proved beyond reasonable doubt. Nature and scope of the jurisdiction of this Court while trying the election petition based on corrupt practice as defined under Section 123 of the R.P. Act has been reiterated by Supreme Court in number of case laws.

40. In the case of *Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan*, (1975) 4 SCC 769: AIR 1975 SC 667 the Hon'ble Apex Court laid down the following principles:

"Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial."

Secondly, even if the nature of the trial of an election petition is not the same in all respects as that of a criminal trial, the burden of proving each and every ingredient of the charge in an election petition remains on the petitioner. If a fact constituting or relevant to such an ingredient is pre-eminently within the knowledge of the respondent, it may affect the quantum of its proof but does not relieve the petitioner of his primary burden."

41. In the case of *Sultan Salahuddin Owasi V. Mohd. Osman Shaheed & Ors.* (AIR 1980 SC 1347, the Hon'ble Supreme Court has observed thus:-

"It is now well settled by a large catena of the authorities of this Court that a charge of corrupt practice must be proved to the hilt, the standard of proof of such allegations the same as a charge of fraud in a criminal case."

42. Similar view has been expressed by the Hon'ble Supreme Court in the case of *N.C. Zeliang Vs. Aju Newmal and others*, AIR 1981 SC 8 that a charge under section 123 of the R.P. Act must be proved by clear and cogent evidence as a charge for criminal offence. A charge of corrupt practice cannot be proved by preponderance of probabilities but, the Court is required to satisfy that there is evidence to prove the charge beyond reasonable doubt. The election process in our country is an extremely expensive and while declaring the election of a candidate null and void, the entire process of election is set at naught resulting in reelection. Therefore, such a course should be adopted only when the allegations of corrupt practice are proved beyond reasonable doubt.

43. In *Ram Sharan Yadav v. Thakur Muneshwar Nath Singh & Ors.* [1984] 4 S.C.C. 649, the Hon'ble Supreme Court has observed thus:

"The sum and substance of these decisions is that a charge of corrupt practice has to be proved by

convincing evidence and not merely by preponderance of probabilities. As the charge of a corrupt practice is in the nature of a criminal charge, it is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. This is more so because once it is proved to the satisfaction of a court that a candidate has been guilty of 'undue influence' then he is likely to be disqualified for a period of six years or such other period as the authority concerned under Section 8-A of the Act may think fit.

By and large, the Court in such cases while appreciating or analysing the evidence must be guided by the following considerations: (1) the nature, character, respectability and credibility of the evidence,

(2) the surrounding circumstances and the improbability appearing in the case,

(3) the slowness of the appellate court to disturb a finding of fact arrived at by the trial court who had the initial advantage of observing the behaviour, character and demeanor of the witnesses appearing before it, and (4) the totality of the effect of the entire evidence which leaves a lasting impression regarding the corrupt practices alleged"

44. In the case of *PC. Thomas Vs. Adv. P. M. Ismail*, reported in (2009)10 SCC 239 Hon'ble Apex Court observed as under:

"Before we proceed to examine the evidence of the case to consider the question as to whether charges of corrupt practice were established against the appellant, we deem it necessary to reiterate that a charge of corrupt practice envisaged by the act is to be equated with a criminal charge"

45. Similar view has been reiterated by the Hon'ble Supreme Court in the case of *Abhiram Singh Vs. C.D. Commachen*, reported in (2017) 2 SCC 629 .

46. Adverting to the facts of the petition, Rakesh Giri (DW-1) in his evidence has deposed that he knew Bhagwandas Prajapati who was one of the candidates in general election of the Legislative Assembly. He had never authorized Bhagwandas for any corrupt practice. Bhagwandas himself was contesting the election as independent candidate. Bhagwandas Prajapati has not been impleaded as a party. He has no knowledge about Narendra Rai. Police had seized an amount of Rs.4,70,000/- from one Narendra Rai and after election same has been returned to Narendra Rai and Bhagwandas. The evidence of Rakesh Giri is un rebutted.

47. Bhagwandas Prajapati (DW-2) in his evidence has deposed that in 2018 Legislative Assembly Election he had contested as an independent candidate from 43, Tikamgarh Legislative Assembly. Narendra Kumar Rai is his friend. In the election, some money was seized from him and Narendra Rai, but after election that money was returned to them. He has produced Exhibit P/10 i.e. certified copy of his nomination form. In his cross-examination he has admitted that he had secured only 382 or 384 votes in the election.

48. Narendra Kumar Rai (DW-3) has deposed that Bhagwandas Prajapati (DW-2) is his friend. He works in Marico Company which deals in Saffola Oil. In 2018, he after collecting money of sale was returning to his home, near Dhanushdhari Temple, Bhagwandas Prajapati met him and when they both were going towards their home, on the way, they were apprehended by the Flying Squad team of the Election Commission and had seized his Alto car and Rs.4,70,000/- cash collection of his sales. He

has deposed that he never canvassed for BJP candidate Rakesh Giri. His seized money and vehicle were returned to him after election. Copy of the order is Exhibit P/11. He has denied the suggestion offered by learned counsel for the petitioner that money seized was being taken for distributing the same among voters.

49. Thus, from the evidence of Bhagwandas Prajapati and Narendra Kumar Rai, it is revealed that money was seized from the Alto Car belonging to Narendra Kumar Rai and after completion of election process that money along with Alto car was returned to them by the competent authority. In this regard their evidence finds corroboration from the evidence of Sushil Kumar Khare (DW-12) who has deposed that in 2018 Legislative Election he was in charge of the Flying Squad Team. On 25.11.2018, they had seized Rs.4,70,000/- cash from the Alto vehicle bearing registration No.MP-36-C-3046 belonging to Narendra Kumar Rai and after seizure, vehicle and cash was handed over to the SHO, Badagaon. It is also his evidence that along with that amount and vehicle Tax Invoice No. 661 of Rs.17,033/-(Exhibit P/10) was also seized from Narendra Kumar Rai. Exhibit P/11 seizure memo was prepared. Exhibit P/12 was also prepared. In cross-examination, he has admitted that amount which was seized from Narendra Kumar Rai was legal and tax paid amount which was returned to him after election. On a perusal of Exhibit D/11, order passed by a committee of three persons, it is apparent that amount of Rs.4,70,000/- and Alto car which was seized from the possession of Narendra Kumar Rai was returned to him by Exhibit D/11 order.

50. From the evidence of Bhagwan Das (DW-2) and Exhibit D/10 nomination form it is apparent that Bhagwan Das, S/o Shyamlal was an independent candidate from 43, Tikamgarh Constituency Assembly. The

amount was seized from them and later it was released in the favour of Narendra Kumar Rai as it was found belonging to Narendra Kumar Rai as he had collected the same from the business man to whom he had sold Saffola Oil. Petitioner has failed to produce any cogent and reliable evidence to prove that Narendra Kumar Rai had distributed any cash to Firoz Khan or anyone else at dictate of returned candidate respondent No.1. Narendra Kumar Rai is the friend of Bhagwandas (DW-1) who himself was candidate in the election and was found travelling with him in the Alto car. Therefore, having taken into consideration the evidence of witness Firoz Khan (PW-3), Dhanendra Singh (PW-4), Bhagwandas Prajapati (DW-2) and Narendra Kumar Rai (DW-3), document P/11, Exhibit P/12, Exhibit D/10 and D/11, it can be easily inferred that petitioner has not been successful to prove that any cash was distributed by Narendra Kumar Rai and Bhagwandas Prajapati at the behest of respondent No.1. It is worthwhile to mention that no suggestion was offered to Bhagwandas Prajapati (DW-2) and Narendra Kumar Rai (DW-3) that they had distributed any currency note of Rs.2,000/- denomination to Firoz Khan (PW-6) at the behest of respondent No.1.

51. As already discussed that though no issue has been framed about organization of Bhandara, but same has been discussed considering the averments made in para 18 of the Election Petition and same has not been found proved.

52. The allegations of corrupt practice must be clearly pleaded in the petition with full particulars and to be proved by cogent and relevant evidence. It is settled law that no evidence is admissible without pleading in the election petition. The pleading of committing corrupt practice has to be proved by the petitioner beyond reasonable doubt because the burden of proof of a fact is always on a person who has averred about

such facts. If the initial burden is discharged then onus is shifted to the opposite party to prove the contrary. Unless the initial burden is discharged, the shifting of onus will not arise. Further, the facts are to be proved in a positive manner and not in a negative manner. In this case, the petitioner has not been able to prove the averments made in this regard in his petition. Therefore, the question of shifting onus does not arise. In this case petitioner was required to prove all the allegations made in the petition which occurred on different dates but he failed to prove all the allegations beyond reasonable doubt.

53. Thus, in the light of above analysis and for the foregoing reasons, I am of the view that petitioner has not been successful to prove all the allegations of corrupt practice and Issue No.II and VI against respondent No.1 beyond reasonable doubt. Thus, Issue No.II and VI are decided accordingly and it is held that respondent No.1's election is not vitiated on the ground mentioned under Section 100(1)(b) and Section 100(1)(d) as neither he, nor none of his electoral agents/supporters or any agent has done any corrupt practice within the meaning of Section 123 of the R.P.Act of 1951.

ISSUE NO. 3

54. The petitioner in Para 19, 20 and 21 of the Election petition has averred about violation of Section 56 of the Act read with Rule 15 of the Conduct of Election Rules, 1961 and has submitted that result of election was materially affected on account of closing of the electoral voting machine of different polling booth number 43, 57, 141, 154, 165, 169 and 182 mentioned in para 19, before the prescribed time of closing of the voting time i.e. 5:00 P.M.,

55. Ganesh Kumar Jaiswal (PW10) has deposed that in 2018 M.P. Legislative Constituency Election, he was the Returning Officer for 43, Tikamgarh Legislative Constituency. Counting of the votes had taken place on 11.12.2018, at the time of counting of the ballots, electoral agents of the Indian National Congress had raised objection regarding polling booth Nos. 43, 57, 141, 154, 165, 169 and 182 stating that control unit are showing early time of the closing before the scheduled time and in this regard, Exhibit P/7 objections were raised. He further deposed that Exhibit P/7 was sent to the Principal Secretary, Election Commission of India, New Delhi and guidance was sought. He has admitted that in the aforesaid control units, time shown was of before 5:00 PM. He further deposed that polling agents had put their signature on the time of closing of the machines and had not made any complaint about the time of closure of the voting machine. He deposed that voting time was from 8:00 AM to 5:00 PM and voting cannot be closed before 5:00 P.M.

56. In para 5 of his cross-examination, Ganesh Kumar Jaiswal (PW10) has made it clear that on 23.05.2019, Election Commission of India had issued clarification about Poll Start Time (PST) and Poll End Time (PET) and as per this clarification Poll Start time (PST) is the time when 1st voter cast his vote and Poll End Time (PET) is the time when last voter cast his vote. He has made it clear that in Column 4, the time shown is the time at which last voter had cast his/her vote and not the time of closing of voting at Polling Booth Nos. 43, 57, 141, 154, 165, 169 and 182. He has admitted that Exhibit D/2 Circular was issued by the Election Commission of India and it was circulated to all District Returning Officers by Chief Election Officer, Madhya Pradesh with Exhibit D/3. Ganesh Kumar Jaiswal (PW-10) has clearly deposed that no complaint

was received from any quarter that any EVM was closed before the schedule time.

57. Learned counsel for the petitioner has contended that in view of the admission made in para 2 of his evidence by Ganesh Kumar Jaiswal (PW10), issue No.3 stands proved and election of respondent No.1 can be set aside under Section 100(i)(d) of the Act as several voters had been restrained from exercising their right to franchise. In this regard, he has also referred the evidence of Kehar Singh Lodhi (PW7), Rajesh Soni (PW8) and Dayaram Ahirwar (PW9).

58. Kehar Singh Lodhi (PW7) has deposed that EVM machine was closed by the Polling Officer at 4:30 PM. When he had asked Polling Officer as to why he has closed EVM machine, he had replied that now no voter is present or waiting to cast the vote, at this he had told him that voters are standing outside booth but he was sent outside the polling booth by Polling Officer. Same is the evidence of Rajesh Soni (PW8).

59. In his cross-examination, Kehar Singh Lodhi (PW7) has admitted that he had no card issued by Election Commission showing that he ever worked as polling agent for petitioner Yadvendra Singh. He admitted that he had not made any complaint about the closure of the EVM machine before scheduled time, to Polling Officer, Returning Officer or Police. This witness Kehar Singh could not produce any card issued by Election Commission or Returning Officer to show that he had worked as polling agent of petitioner Yadvendra Singh at booth No.141. Even if for the sake of argument it is assumed that he was polling agent of petitioner at booth no. 141, he did not made any complaint in writing either to Polling Officer, District Returning Officer or Police about closure of EVM machine before scheduled time. This witness has admitted that no complaint was made by him complaining that any voter was deprived

from exercising his right to vote. In this case petitioner has not examined any voter to prove that he had been deprived from exercising his right to vote or he was standing outside the Polling Booth before 5 PM and EVM machine was closed before schedule time. Thus, the evidence of Kehar Singh Lodhi (PW-7) an interest witness being unreliable and general in nature does not inspire any confidence.

60. Ravi Soni (PW-8) in cross examination has admitted that has no card issued by Election Commission showing that he ever worked as polling agent of petitioner at polling booth No. 43. He has admitted that he had put his signature after closure of EVM but had not mentioned closure time of EV Machines. He has admitted that last voter had cast his vote at 4:40 PM and same is recorded in machine. From the evidence of Ravi Soni (PW-8), it is apparent that EV Machine was closed only after voting by last voter present in the booth. Thus, from the evidence of this witness it is apparent that E.V. Machine was closed in his presence by polling officer after exercise of franchise by last voter present on booth.

61. Dayaram Ahirwar (PW9) has deposed that on 28.11.2018, at around 8:00 A.M., he had gone to cast his vote. At that time, there was a long cue of voters at booth due to which he did not cast his vote and went back. At around 4:30 P.M., when he again reached at polling booth to cast vote, polling Officer told him that voting time is over and he cannot cast vote and was not permitted to cast his vote. He has admitted his signature on affidavit Exhibit P/6.

62. In cross-examination, witness Dayaram Ahirwar (PW-9) has stated that he cannot name the advocate who had prepared his affidavit. He stated that he was not permitted to go inside the polling booth. He admitted that he cannot say if the watch/clock which is kept at polling booth was showing the time as "5:00 PM". He has stated that he was the

only person who had attempted to cast the vote. He has admitted that he had not made any complaint about his being deprived from exercising his franchise. He has stated that he had given Exhibit P/6 affidavit on 16.01.2019. He stated that he has not brought his Voter ID card. He stated that he had made oral complaint to Yadvendra Singh only. He has admitted that he had handed over Exhibit P/6 affidavit to Yadvendra Singh (PW-6). As far as the reliability and truthfulness of the evidence of Dayaram Ahirwar (PW9) is concerned, same does not inspire confidence as at no point of time he made any complaint in writing to any authority about his deprivation from exercising his vote on the date of voting at a particular booth. For the very first time, he gave his affidavit on 16.01.2019 to petitioner with whom he has very good relations and is well acquainted. His evidence does not find corroboration from evidence of any other voters of the same polling booth station. He does not appear to be a truthful and genuine witness. Hence, no reliance can be placed on his evidence. It is noteworthy that no complaint was made by him about the closing of voting machine before scheduled time. No objections were raised by the polling agents present in the polling booths, about the early closure of electronic voting machines. Therefore, on a meticulous scrutiny of the evidence of all three witnesses, it is concluded that evidence of all three witnesses is after thought and manufactured. Hence, same does not inspire confidence.

63. Learned counsel for the petitioner placing reliance on the case of *Ambika Sharan Singh Vs. Mahant Mahadeva, Giri and Others*, reported in (1969) 2 SCC 492 has submitted that mere not lodging of the complaint cannot be a ground to discard the evidence of witnesses. As far the case of *Ambika Sharan Singh (supra)* is concerned, the facts of the case are not applicable in the present case as in that case the issue of

having filing of FIR for offence under the penal code was argued and in that case complaint had been made in different circumstances, but in the case in hand no complaint has been made, affidavit has been given by Dayaram (PW-9) almost after one month or more that too after declaration of the result too the petitioner who had lost the election and was preparing evidence for election petition. Therefore, no reliance can be placed on the evidence of Dayaram Ahirwar (PW-9).

64. In this case, undoubtedly, Ganesh Kumar Jaiswal (PW10) in para 2 of his evidence has deposed that voting cannot be closed before 5:00 PM, but the moot question arises “whether the time mentioned in the electric voting machines of polling booth number 43, 57, 141, 154, 165, 169 and 182 is the closing time of voting machine or poll end time (PET).”

65. Learned counsel for respondent No.1 has placed reliance on Exhibit D/1, D/2 and D/3. Election Commission of India vide its letter dated 23.05.2019 has clarified the position regarding understanding the PST and PET displayed on the display panel of the control unit of the EVM (Electronic Voting Machine). In this circular, it has been made clear that in Electronic Voting Machine, PST (Polling Start Time) and PET (Polling End Time) are displayed and that indicates the time stamp of the first vote cast and poll end time indicates the time stamp of the last vote cast and not the time of closing voting poll. There are no reasons to disbelieve the clarification given by the Election Commission of India by Exhibit D/2 letter. Therefore, it is apparent that time shown on the Electronic Voting Machine of polling booth numbers 43, 57, 141, 154, 165, 169 and 182 is poll end time (PET) which indicates the time stamp of the last vote cast and not the time of closing of the voting machine.

66. It is worthwhile to mention here that no objections were raised by the petitioner’s polling agent at the time of closing of electronic voting

machines of aforesaid polling booths and these were properly closed under the signatures of the voting agents of the petitioner also. Therefore, it cannot be said that poll End Time shown on display of the control unit of the aforesaid voting machines is the closure time of EVM machines. In this regard, Exhibit C/3 and C/4 are the relevant documents showing presence and no objection by the agents of the petitioner. Thus, the argument of learned counsel for the petitioner that EVMs of the aforementioned polling booths were closed before the schedule time and some of the voters were deprived from exercising their franchise being beyond reason and logic is not tenable.

67. Therefore, on the basis of above discussion, it is held that petitioner has not been successful to prove beyond all reasonable doubts that election of the returned candidate was materially affected due to closure of EVM machines of some polling booths before the scheduled time of closing.

ISSUE NO. 5

68. In para 38 of the petition, petitioner has alleged violation of Rule 49-S and Rule 56 C (2) of the Conduct of Election Rules, 1951 and has pleaded that Abhijeet Agrawal, District Electoral Officer cum Collector mischievously got the EVM machine of certain polling stations No. 41, 49 and 220 changed at the time of counting, which materially affected the election. This issue relates to result of the election of a returned candidates materially affected on account of violation of 49-S and 56 C (2) of the Conduct of Election Rule, 1951 and pertains to Section 100(1) (d)(iv) of the 1951 Act. Petitioner has filed a copy of form 17 vide Annexure A-39, Annexure A-40 and Annexure A-41 with the election

petition. In para 18 of his examination-in-chief, petitioner Yadvendra Singh (PW-1) has deposed that at the time of counting, EVM machine of polling booths No. 41, 49 and 220 were changed but in support of his deposition, he has not exhibited the Annexure A-39, Annexure A-40 and Annexure A-41. Petitioner has not produced any documentary evidence to show that before counting 3 EVM machines of the aforesaid polling booths were changed by the Collector or in this regard any complaint was made by him. The objections raised by the Pool Counting Agent of the petitioner were duly decided.

69. As per the Annexure A-39 which has not been proved by the petitioner, complaint was made about control unit BCUAD 95892 whereas Ganesh Kumar Jaiswal (PW-10) Returning Officer, in his evidence, has clearly deposed that at booth number 41, numbers of the control unit was BCUAD 35892 and its voter unit was BBUAD 61717 and BBUAC 09350 and its identification number was BVTEP 07461 and same is exhibit C-4. In this regard the evidence of the Ganesh Kumar Jaiswal (PW-10) is unrebutted and in his cross he has made it clear that Ex. PR/1/9 filed by respondent No. 1 and Ex. C-4 are one and same. Thus, it is apparent that in Annexure A-39, petitioner has mischievously given the wrong number of the EVM machine. In this regard, no other oral or documentary evidence has been produced by the petitioner to prove the allegation leveled by him. Thus, it is held that petitioner's documents Annexure A-39 annexed with the election petition is false and fabricated and in it actual number of the control unit has been manipulated.

70. Thus, on the basis of above analysis and for the reason mentioned herein above, it is held that petitioner has not been successful to prove that EVM of booth numbers 41, 49 and 220 were changed at the time of

counting which materially affected the election. As such issue No. 5 is decided accordingly.

ISSUE NO. 4

71. Petitioner, in para No. 32 to 37, has averred that against respondent No. 1 as many as four criminal cases were pending at the time of filing of nomination form. However, he has not taken pain to disclose the facts of all the criminal cases pending against him by getting the same published in the newspaper as mandated by law. Thus, he deliberately concealed his criminal record by non-disclosing the criminal cases in the election form and failed to publish the same mandated by law. Non disclosure of criminal case is suppression of material facts and defect substantial character and amounts to suppression of material facts from the voters. Learned counsel appearing for the petitioner has submitted that returning candidate/respondent No. 1 was required to prove that he had published his criminal antecedent in three widely circulated newspapers as per circular dated 10.10.2018 (Annexure A-37) of the Election Commission of India but he has not proved the same. Publication, in three newspapers, was within the special knowledge of the respondent No.1. Learned counsel has placed reliance on the judgment of *Sushil Kumar Vs. Rakesh Kumar, (2003) 8 SCC 673*, the Hon'ble Supreme Court held as under:-

:31. Furthermore, in relation to certain matters, the fact being within the special knowledge of the respondent, the burden to prove the same would be on him in terms of Section 106 of the Indian

Evidence Act. However, the question as to whether the burden to prove a particular matter is on the plaintiff or the defendant would depend upon the nature of the dispute. [See Orissa Mining Corporation and another vs. Ananda Chandra Prusty, [(1996) 11 SCC 600 : 1197 SCC (L&S) 408: AIR 1997 SC 2274].

32. The age of a person, in an election petition has to be determined not only on the basis of the materials placed on records but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence, the question of onus of proof becomes academic [See Union of India vs. Sugauli Sugar Works (P) Ltd., (1976) 3 SCC 32, (SCC Para 14) and Cox and Kings (Agents) Ltd. vs. Workmen [(1977) 2 SCC 705 : 1977 SCC (L &S) 342 : AIR 1977 SC 1666] (AIR para 36)]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established.”

72. It is further argument of the learned counsel for the petitioner that publication of criminal antecedents in Lokdesh newspaper is not sufficient compliance of the circular dated 10.10.2018 issued by the Election Commission as same is not a widely circulated newspaper in Teekamgarh. It is further urged that instead of three publications only one publication dated 19.11.2018 was made. Therefore, compliance was not properly made. Hence, election of the petitioner is liable to be quashed under Section 100(1)(d)(4) of the 1951 Act. Learned counsel for the petitioner has placed reliance on the case of *Union of India Vs.*

Association for democratic Reforms and another, with People's Union for Civil Liberties and another Vs. Union of India and Another (2002) 5 SCC 294. He has also placed reliance on the case of Brajesh Singh Vs. Sunil Arora and others, (2021) 10 SCC 241 and Public Interest Foundation and Others Vs. Union of India and another, (2019) 3 SCC 224. Learned counsel for the respondent has contended that as per the mandate in the case of *Union of India Vs. Association for democratic Reforms (Supra)*, candidate is required to file affidavit in form 26 mentioning inter alia pending criminal cases which is required to disclose in the election form and parties Website.

73. As per the circular No. 3/4/2017/SDR/Vol.II dated 10.10.2018, directions were issued that candidates at elections to the house of parliament and Houses of State Legislatures who have criminal cases against them, either pending cases or cases of conviction in the past, and to the political parties that set up such candidates shall publish a declaration about such cases, or wide publicity, in newspapers with wide circulation in the constituency area. It was further directed that this declaration to be published in Format C-1 attached with the circular at least on three different dates from the day following the last date for withdrawal of candidatures and upto two days before the date of poll. The matter should be published in font size of at least 12 and should be placed suitably in the newspapers so that the directions for wide publicity are complied with in letter and spirit. It was further mandated that declaration of such criminal cases be also declared on T.V. channels on three different dates during the above mentioned period. But, in the case of the declaration in TV channels, the same should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll.

74. In para 3 (c) of the circular, it was made clear that candidates who have criminal cases as per the declarations, the Returning Officer shall give a written reminder about the directions herein for publishing declaration about the criminal cases in newspapers and TV channels for wide publicity. A standard format was also given. It was also directed that candidates with criminal cases set up by political parties are required to declare before the Returning Officer concerned that they have informed their political party about the criminal cases against them and declaration has to be made in Form-26 in item (6A). Political parties were also required to publish declaration giving details in this regard on their website as well as in TV channels and newspapers having wide circulation in the State concerned.

75. The question which arises for the consideration is whether the returned candidate had made compliance of the direction given in circular dated 10.10.2018?

76. It is settled position of law that no proof can be seen without pleading. This issue was earlier raised by the petitioner and same has been decided vide order dated 13.01.2023. The para 7 of the order is reproduced as under:-

“On a perusal of the pleadings contained in para 33 to 37 of the election petition, it is pleaded that four criminal cases were pending against the respondent No. 1 at the time of filing of the nomination form but he did not take pain to disclose the fact of all the cases by getting the same published in newspaper as mandated by law. As per the pleadings of the petitioner, the petitioner had not published the fact of all the criminal cases pending against him in the newspaper as mandated by law. It is not the case of

the petitioner that it was not published in a widely circulated newspaper."

77. Petitioner Yadvendra Singh (PW-1), in para 14 of his evidence, has deposed that Lokdesh Newspaper has no circulation in Tikamgarh. In election petition, petitioner has nowhere pleaded that Lokdesh newspaper has no circulation in Tikamgarh. As per the averments in petition, respondent No. 1 had not published his criminal antecedent in newspaper.

78. Rakesh Giri (DW-1), in his evidence, has deposed that in his nomination form Ex. D-4, he has given detailed information about the cases pending against him at the time of filing of nomination form. One criminal case and three other cases related to illegal colonization were registered against him. He had furnished full details of such cases in his Ex. D-4 nomination form. He further deposed that he had got published the record of all criminal cases in "Lokdesh Newspaper" and telecast of such cases was also made in "Sadhana News Channel". He had published his criminal cases in print media and electronic media both. The record of above criminal cases was also published on official website of the Bharatiya Janata Party because he had emailed that information from his mobile phone sim number 9111879789 on the official website of the Bharatiya Janata Party and same is Ex. D-5. He has filed Ex. D-6, Ex. D-7 and Ex. D-8 of the Lokdesh newspaper. He further deposed that Returning Officer had also displayed the record of his criminal cases on its official notice board. He had not concealed any information. He further stated that Returning Officer had not given him any notice regarding concealment of information relating to criminal cases. In this regard, he had produced Ex. D-9 information obtained from office of Returning Officer. In para 19 of his cross examination, he has admitted that information regarding criminal cases pending against him was

published in Lokdesh newspaper only as Lokdesh newspaper had a wide circulation in Tikamgarh. He has denied the suggestion offered by the learned counsel for the petitioner that Lokdesh newspaper had no circulation in Tikamgarh.

79. On a perusal of Ex. D-4, it is apparent that in nomination form at form No. 26, respondent No.1 has given declaration of the criminal cases pending against him. Ex. D-5 shows that details of criminal cases pending against him were sent by respondent No.1 to his political party through E-mail. On a perusal of Ex. D-6, Ex. D-7 and Ex. D-8, Lokdesh newspaper dated 19.11.2018, 21.11.2018 and 23.11.2018, it is apparent that respondent No.1 had got published information of criminal cases pending against him in the aforesaid newspaper on the date mentioned therein. The aforesaid evidence of Rakesh Giri (DW-1) finds corroboration from the evidence of Tejbhan Pal (PW-13) Editor of the Lokdesh newspaper.

80. Tejbhan Pal (PW-13), in his evidence, has deposed that he is the Editor of Lokdesh newspaper. This newspaper is being published from Bhopal since 2016. The editions of this newspaper are also published from Raipur and Gwalior. The newspaper has its circulation at Bhopal and eight other places and is sent through road. He deposed that he has brought a copy of Lokdesh newspaper dated 19.11.2018 and at its page No. 7 form C-2 is published and in form C-2, information of the criminal cases of Rakesh Giri, B.J.P. candidate from 43, Tikamgarh has been published. Newspaper is Ex. P-13. He has specifically stated that in the year 2018, Lokdesh newspaper was having its circulation in Tikamgarh but after outbreak of Corona pandemic from 24.03.2020 onward, newspaper is not being circulated in Tikamgarh. In cross examination,

Editor Tejbhan Pal (PW-13) made it clear that information at form C-2 regarding criminal cases of Rakesh Giri has been published at page number 7 of Ex. P-13 which relates to the information regarding Tikamgarh, Sagar, Damoh and Chhatarpur District. He further admitted that aforesaid information of criminal cases of Rakesh Giri was published at page number 7 as that particular page publishes the information regarding Tikamgarh District only.

81. Thus, from the evidence of Rakesh Giri (DW-1) it is evident that he had got all the information regarding criminal cases against him published in Lokdesh newspaper and same is fortified by the evidence of petitioner's witness Tejbhan Pal (PW-13).

82. As per Ex. D-9 issued by the office of Sub Divisional Officer (Revenue Tikamgarh), it is apparent that no notice of format 3-C was given to the respondent No.1 by Returning Officer. Thus, from Ex. D-6, Ex. D-7 and Ex. D-8, it is found duly proved that respondent No.1 had published all details in newspaper about the criminal cases pending against him. He has also declared the same in his nomination form. Therefore, the allegations made in paras No. 32 to 37 of the petition that respondent No.1 had not disclosed the pendency of four criminal cases against him in nomination form is not correct and such averments have been made without any basis.

83. It is further contention of learned counsel for the petitioner that Lokdesh newspaper is not a widely circulated newspaper as per the mandate of circular dated 10.10.2018 of the Election Commission of India. Therefore, publication of same would be considered as non compliance of the aforesaid circular as the publication of the criminal

cases in less circulated newspapers materially affect result of the election which makes respondent No. 1 result liable to be declared invalid.

84. Except petitioner Yadvendra Singh (PW-1), no witness deposed that Lokdesh newspaper is not a widely circulated newspaper in Tikamgarh. The evidence of the Yadvendra Singh (PW-1) in this regard does not find corroboration from the evidence of any other witness. On the contrary from the evidence of Rakesh Giri (DW-1) and Tejbhan Pal (PW-13), it is apparent that before 24.03.2020 i.e. outbreak of Corona pandemic, Lokdesh newspaper was being regularly circulated in Tikamgarh and in it information regarding criminal cases pending against Rakesh Giri (DW-1) was published. Petitioner has not produced local witnesses of Tikamgarh to prove that Lokdesh newspaper at the time of 2018 Legislative Assembly Election was not a widely circulated newspaper in the Tikamgarh. Three consecutive information regarding criminal cases have been duly published in the newspaper for a period from 14.11.2018 to 28.11.2018 against respondent No. 1. Hence, it cannot be said that Lokdesh newspaper was not having a wide circulation in the Tikamgarh at the time of Madhya Pradesh Legislative Assembly Election of 2018. It also cannot be ignored that initial burden to prove the allegations made in the election petition was upon the petitioner but he has not been successful to prove his initial burden by not adducing cogent, legal and reliable evidence on the point as he has made no pleading about the publication of the criminal cases in less widely circulated newspaper. It has also not been proved by the petitioner that due to publication of the said criminal cases in less circulated newspaper, the election was materially affected. In the case of *Mangani Lal Mandal Vs. Bishnu Deo Bhandari*, (2012) 3 SCC 314, the Hon'ble Supreme Court has held as under:-

“11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz., Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in (1) Jabar Singh Vs. Genda Lal, AIR 1964 SC 1200: (1964) 6 SCR 54; (2) L.R. Shivaramagowda Vs. T.M. Chandrashekhar [(1999) 1 SCC 666] (3) Uma Ballav Rath Vs. Maheshwar Mohanty ((1999)3 SCC 357).

85. In the aforesaid facts and circumstances of the case, I am of the view that petitioner has not been successful to prove that respondent No. 1/returned candidate had deliberately concealed his criminal record by non disclosing criminal cases in the election form and also failed to publish the same in news paper mandated by law. Thus, issue No. 4 is decided accordingly.

ISSUE NO.7

86. For the foregoing detailed discussion in this order applying the test laid down by the Hon'ble Supreme Court in catena of decisions touching

issues involved in the instant case and in view of the findings (supra) recorded by this Court with regard to issue No.1, 2, 3, 4, 5 and 6, this Court is of the view that the instant election petition filed by the petitioner is with vague or reckless allegations of corrupt practice without foundation and sought to be proved by evasive, inaccurate and inadmissible evidence. Thus, it is clear that the petitioner has not been able to prove his case, therefore, this election petition being devoid of merits deserves to be dismissed.

87. Accordingly, this petition is hereby dismissed. The parties to bear their own costs.

88. The Registry is directed to send an authenticated copy of this judgment to the Election Commission of India and the Speaker of Madhya Pradesh Legislative Assembly under Section 103 of the Representation of People Act, 1951 at the earliest.

89. Certified copy as per rules.

Sd/-
(DINESH KUMAR PALIWAL)
Judge.

By order,
Sd/-
(AMIT KUMAR)
Secretary,
Election Commission of India.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली - 110 001

नई दिल्ली, तारीख- 26 अप्रैल 2023, 06 वैसाख, 1945 (शक)

अधिसूचना

सं.- 82/म.प्र./(19/2019)/2023- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 19 में मध्य प्रदेश उच्च न्यायालय के दिनांक 16.12.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (मंजू राजेंद्र दादू विरुद्ध सुमित्रा कसदेकर एवं अन्य)।

आदेश से,
हस्ता./-
(अमित कुमार)
सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, Date: 26th April 2023, 06 Vaisakha, 1945 (Saka)

NOTIFICATION

No. 82/MP/(19/2019)/2023 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment/Order dated 16.12.2022 of the High Court of Madhya Pradesh in the Election Petition No. 19 of 2019 (Manju Rajendra Dadu Vs. Sumitra Kasdekar & Others).

**IN THE HON'BLE HIGH COURT OF MADHYA
PRADESH BENCH AT JABALPUR**

Election Petition No: 19 of 2019

IN THE MATTER OF:

Manju Rajendra Dadu D/o Shri Rajendra Dadu,
Aged about 29 years, R/o 20 Kanapur Rodavala
Tehsil Khakanar District Burhanpur Madhya Pradesh
- 450332

Petitioner

Versus

1. Sumitra Kasdekar, W/o Rajesh Kumar, Returned Candidate, village Deditalai District Burhanpur M.P.
2. Returning officer, Vidhan Sabha 179 Nepanagar District Burhanpur M.P.
3. Sub-divisional officer Nagar Burhanpur.

Date :- Manju Rajendra Dai
Presented by Shri Abhl
who is identified by Shri Pankaj Yadav
Advocate at 3.15 a.m. on 25/11/19
It is properly drawn up, within time and
properly stamped.
It is accompanied by requisite number of
spare copies, list of documents, registered
address, P.F. and receipt of security deposit
of Rs. 2,000/-
10/25/19
Registrar (Judicial-1)

Respondents

Election Petition under Section 80, 81
OF MADHYA PRADESH with Section 100 of the
Representation of the People Act, 1951

Petitioner submits as under:-

1. That vide instant election petition the petitioner is raising in question the election of respondent no.1, who is the Returned candidate from constituency no.179 Nepanagar M.P, mainly on the ground as contained in section 100 (1)(a) (d) (i & ii) of the representation of people act 1951 (herein after refer to as the act of 1951). The election of the petitioner is vitiated under the aforementioned section of act of 1951 and is therefore liable to be set aside.

NOTAR

20/11/19

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARION THE 16th OF DECEMBER, 2022ELECTION PETITION No. 19 of 2019BETWEEN:-MANJU RAJENDRA DADU D/O SHRI RAJENDRA
DADU, AGED ABOUT 29 YEARS, R/O 20
KANAPUR RODAVALA, TEHSIL KHAKANAR,
DISTRICT BURHANPUR, (MADHYA PRADESH)

----APPLICANT

(BY SHRI ARPAN PAWAR - ADVOCATE)

ANDSUMITRA KASDEKAR, W/O RAJESH
KUMAR, RETURNED CANDIDATE, R/O
VILLAGE DEDTALAI, DISTRICT
BURHANPUR (MADHYA PRADESH)RETURNING OFFICER, VIDHAN SABHA,
178, NEPANAGAR, DISTRICT BURHANPUR
(MADHYA PRADESH)

----RESPONDENTS

(BY SHRI SANKALP KOCHAR – ADVOCATE FOR RESPONDENT NO. 1)

Reserved on : 01.11.2022.

Pronounced on: 16.12.2022

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the Court pronounced the following:*

ORDER

Heard on I.A. No. 7819/2022, an application under Section 151 of the C.P.C. for taking subsequent events on record and dismissal of the petition as rendered infructuous.

2. In the instant election petition, the petitioner has called in question the election of respondent No. 1, who is the returned candidate from Constituency No. 179, Nepanagar (M.P.), mainly on the grounds as contained in Section 100 (1) (a) (d) (i & ii) of the Representation of People Act, 1951 (hereinafter referred to as the 'Act of 1951').

3. The Election Commission issued notification on 02.11.2018 for assembly election for the State of Madhya Pradesh. According to the notification, polling was scheduled on 28.11.2018 and counting of votes was to be held on 11.12.2018. The respondent No. 1 submitted her nomination form from Indian National Congress Party from the Constituency No. 179, Nepanagar (M.P.). Respondent No. 1 was declared elected from the aforesaid Constituency on 11.12.2018. In the present election petition, the prayer has been made that the election of respondent No. 1 from the Constituency No. 179, Nepanagar (M.P.) be set aside.

4. During the pendency of this election petition, respondent No. 1 tendered her resignation from the post of Member of Legislative Assembly of Nepanagar on 17.07.2020 before the Chairperson, Legislative Assembly. The resignation letter has been filed as document No. 1, along with, I.A.. The resignation was accepted on 17.07.2020. Copy of the acceptance letter is filed as document No. 2, along with,

I.A.. After acceptance of resignation, the election of respondent No. 1 has come to an end and the issue involved in the present petition remains only academic nature. The petition is at a primary stage of evidence and, therefore, there is no obstacle in dismissing this petition having been rendered infructuous.

5. It would be pertinent to mention at the stage that after acceptance of the resignation, the election Commissioner declared bye-elections on 10.11.2020. Respondent No. 1 submitted her nomination form from Bhartiya Janta Party. The elections were held on 10.11.2020 and respondent No. 1 was declared elected in the bye-elections. Admittedly, in the present case, corrupt practices have not been alleged.

6. Learned counsel for the respondents has placed reliance on the judgment passed by the Apex Court in the case of *Podipireddy Atchuta Desai Vs. Chinnam Joga Rao and Others*, reported in 1987 (Supp.) wherein, it has been held as under:-



"The question raised in this election appeal are of some importance. We also see the force of the submissions urged on behalf of the appellant. All the same, having regard to the fact that fresh elections have already taken place and the appeal has become redundant in that sense, we will be undertaking a futile exercise if we examine the validity or otherwise of the view taken by the High Court in dismissing the election petition. Under the circumstances without expressing any view, one way or the other, on the validity or otherwise of the decision of the High Court, we direct that this appeal shall stand disposed of with no order as to costs."

7. He further relied on the judgment passed by the Hon'ble Apex Court in the case of *Mundrika Singh Yadav Vs. Shiv Bachan Yadav and Others*, (2005) 12 SCC 211, wherein, it has been held as under:-

"1. An election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. A perusal of the judgment of the High Court shows that the appellant had sought for the relief of re-count of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Legislative Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly is over. Fresh elections are being held. No relief can be allowed to the appellant in this appeal even if this appeal is allowed. The appeal is rendered infructuous and is dismissed accordingly.

2. No order as to the costs."

8. He also relied on the judgment passed by the Apex Court in the case of *Kashi Nath Mishra Vs. Vikramaditya Pandey and Others*, reported in (1998) 8 SCC 735, wherein, it has been held as under:-

"1. This appeal arises from Election Petition No. 4 of 1991 filed under Section 81 of the Representation of the People Act, 1951. The appellant had challenged the election of the second respondent to the U.P. Legislative Assembly from the 227 Ballia Assembly Constituency in District Ballia. The election petition was dismissed. The term of the Assembly has expired by efflux of time;

thereafter, another election has been held and another Assembly constituted.

2. *Under these circumstances, the appeal having become infructuous is dismissed. No costs."*

9. He further relied on the judgment passed by the Allahabad High Court in Election Petition No. 12 of 2017 (**Prempal Singh Vs. Satya Pal Singh Baghel and 10 Others**)

"In P.H. Pandian vs. P. Veldurai and another ((2013) 14 SCC 685), an appeal under Section 116-A of the Representation of the People Act, 1951 was filed questioning the judgment and order made in the election petition in ELP.No.1 of 1996 on 29.12.1999. In this case, the Apex Court has observed that though fresh elections have since been held to Tamil Nadu Legislative Assembly and to an extent this appeal has been rendered infructuous, the manner in which the election petition was dealt with by the High Court causes us concern and that necessitates our making reference to some salient facts. Ultimately, the Apex Court has observed that it is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence. Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation



of the People Act, 1951, it would only be of an academic interest.

24. Whenever in a petition, which includes election petition, the relief claimed with regard to main issue involved becomes redundant or infructuous then for other relief courts may exercise its discretion and may not proceed further in case right of the plaintiff or dependent satisfied or no grievance remained pending against defendant or respondents because of the change of circumstances. The court may use its discretion to drop the proceeding and may not proceed further in a matter even if, some relief of academic nature stand survive."

10. Heard learned counsel for the parties and perused the record.

11. Admittedly, in the present case, respondent No. 1 submitted her resignation from the post of Member of Legislative Assembly of Nepanagar (M.P.) on 17.07.2020 and the same has been accepted by the competent authority on the same date. Thereafter, vacancy of Member of Legislative Assembly, Nepanagar Constituency had arose. Bye-elections were notified to fill up the post by declaring bye-elections on 10.11.2020. Admittedly, respondent No. 1 submitted her nomination form through Bhartiya Janta Party and she was declared elected in the bye-elections. Therefore, the relief claimed by the petitioner has become infructuous. It has been the consistent view of Hon'ble Apex Court that time of the Court is precious one and academic exercise is not warranted unless still some relief may be granted to the petitioner or the appellant. No allegations are levelled in the election petition on corrupt practice

and, therefore, this Court finds that there is no impediment or obstacle in dismissing this petition as the prayer itself has rendered infructuous.

12. In view of the aforesaid discussions and in light of the aforesaid decisions of the Apex Court, I am of the considered view that nothing further survives in this petition. The application preferred by respondent No. 1 i.e. I.A. No. 7819/2022 seeking dismissal of the election petition stands allowed.

13. Consequently, the election petition stands dismissed as having been rendered infructuous.

Sd/-

(S. A. DHARMA DHIKARI)

Judge.

By order,

Sd/-

(AMIT KUMAR)

Secretary,

Election Commission of India.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली - 110 001

नई दिल्ली, तारीख— 26 अप्रैल 2023, 06 वैसाख, 1945 (शक)

अधिसूचना

सं.- 82/म.प्र./(21/2019)/2023- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2019 की निर्वाचन याचिका सं. 21 में मध्य प्रदेश उच्च न्यायालय के दिनांक 01.03.2022 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (जितेंद्र कुमार अवस्थी विरुद्ध संजय यादव)।

आदेश से,
हस्ता./—
(अमित कुमार)
सचिव.
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, Date: 26th April 2023, 06 Vaisakha, 1945 (Saka)

NOTIFICATION

No. 82/MP/(21/2019)/2023 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment/Order dated 01.03.2022 of the High Court of Madhya Pradesh in the Election Petition No. 21 of 2019 (Jitendra Kumar Awasthi Vs. Sanjay Yadav).

Date :-

Presented by Shri. Prashant Kumar Awasthi
who is identified by Shri. D. Maitra
Advocate at 4.45 a.m/p.m. on 25/1/19

It is properly drawn up, within time and properly stamped.

It is accompanied by requisite number of spare copies, list of documents, registered address, P.F. and receipt of security deposit of Rs. 2,000/-

IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT

AT JABALPUR

Election Petition No. 21..... / 2019

Petitioner : Jitendra Kumar Awasthi S/o Jagdish Prasad

Awasthi aged about 46 years Occupation

-Agriculture R/O 50, Village- Khiryani Bargi.

Jabalpur Post Office- Bargi Nagar, Jabalpur

District - Jabalpur (M.P.)

Versus

Sanjay Yadav (Winning Candidate) MLA.Vidhan Sabha Constituency " No. 96 BargiVidhan Sabha", Jabalpur District- Jabalpur

Section Petition under Section 80 read with 100 of the
Representation of Peoples Act 1951

The above named petitioner humbly begs to submit as under:

Facts of the case adumbrated as under:

1. That the petitioner is citizen of India and residing in the state of M.P., District- Jabalpur and having all rights as enshrined in the Representation of Peoples Act 1951.

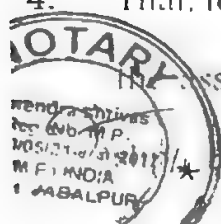
2. That, at the outset, it is submitted that the nomination form of the petitioner not accepted/refused to take **by the oral order dated 09/11/18** by the returning officer and due to

(Judl.-III)
idhya Pradesh
r (M.P.)

- (Judt.-III) That reason aforementioned your humble petitioner was
idhya Pradesh
r (M.P.) unable to contest the M.P. Assembly Election which taken
place dated 28/11/2018 from the 96 Bargi Constituency.

3. That, your humble petitioner to contest the assembly election as an independent candidate which took place dated 28/11/2018, deposited Rs. 10,000/- in cash dated 06/11/2018 vide receipt no. 19687 is annexed herewith and marked as Annexure P/I

4. That, to submit the duly filled up form dated 09/11/2018 for
in assembly election, your humble petitioner was given a
receipt mentioning therein serial No. 4 by



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ELECTION PETITION No. 21 of 2019

BETWEEN:-

JITENDRA KUMAR AWASTHI S/O JAGDISH
PRASAD AWWASTHI, AGED ABOUT 46 YEARS,
OCCUPATION: AGRICULTURE R/O. 50, VILL.
KHIRYANI BARGI JABALPUR POST OFFICE
BARGI NAGAR JABALPUR (MADHYA PRADESH)

.....PETITIONER

(ELECTION PETITIONER JITENDRA KUMAR AWASTHI IS **PRESENT** IN
PERSON)

AND

SANJAY YADAV (WINNING CANDIDATE) MLA
VIDHAN SABHA CONSTITUENCY NO. 96 BARGI
VIDHAN SABHA JABALPUR DIST. JABALPUR MP
(MADHYA PRADESH)

.....RESPONDENT

(BY SHRI VIPIN YADAV - ADVOCATE)

Reserved on : 16.2.2023

Pronounced on: 1.3.2023

*This election petition having been heard and reserved for orders,
coming on for pronouncement this day, the Court passed the following:*

ORDER

1. This Election Petition is filed by Jitendra Kumar Awasthi being aggrieved of the action of authority in not permitting him to fill his nomination form for the State Assembly Election for the Constituent Assembly No.96, Bargi Vidhan Sabha for which the voting took place on 28.11.2018 and the results were declared on 11.12.2018 claiming that not

permitting the Election Petitioner to contest the election in **an arbitrary and illegal manner** has rendered the election as void and, **therefore**, the election to the said Constituent Assembly No.96 Bargi Vidhan Sabha be declared as void.

2. Election Petitioner Jitendra Kumar Awasthi submits **that** he had purchased nomination form after depositing a sum of Rs.10,000/- prior to the last date of filling up of the nomination form on 9.11.2018. Election Petitioner Jitendra Kumar Awasthi alongwith his Proposer **Pyare Lal Jadiya** were available in the election room at about 2:55 PM i.e. prior to the notified timing of 3:00 PM. At the time of his entering in the election room where the nomination forms were to be filled, Assistant Returning Officer Smt.Preeti Nagendra after seeking all the papers of the Election Petitioner Jitendra Kumar Awasthi had given him a Token **Slip No.4**, which was an indication that the election petitioner is entitled to fill nomination form and had entered in the election room prior to the designated time.

3. At about 3:04 PM, Returning Officer Rohit Singh on a dispute having arisen in regard to photograph of another prospective candidate Smt.Keertan Vyas with her counsel or representative had thrown that person out of the room and had threatened his subordinate officers. The election petitioner was carrying a mobile phone in his hand. Returning Officer Rohit Singh thought that he was recording the proceedings, therefore, on such doubt, his mobile phone was taken and upon checking, it was returned back to the election petitioner and when the election petitioner had made a request that he be not insulted, he was threatened and according to the election petitioner, the Returning Officer Rohit

Singh had said that he can even use force but without any provocation, the Returning Officer had thrown the election petitioner out of the election room without accepting his nomination form and that became the bone of contention for which the election petitioner had immediately informed the election supervisor and thereafter had given a complaint to the District Election Officer i.e. District Collector.

4. The election petitioner has filed an election petition in terms of the provisions as contained in Section 80 on the grounds enumerated in Section 100 of the Representation of the People Act, 1951. It is alleged that there is violation of the provisions as contained in Section 100(1)(c) of the Representation of the People Act, 1951, which is the foundation of this election petition, namely, any nomination has been improperly rejected.

5. Returning Officer Rohit Singh admits that 9.11.2018 was the last day of filling up of the nomination form and it was his responsibility to accept the nomination forms of all the persons, who were granted entry in the election room upto 3:00 PM. Returning Officer Rohit Singh admits that nobody present in the election room could be forcefully thrown out provided that the person available has a valid nomination form or the person available is a Proposer of such candidate.

6. In reply to Question No.2 before the High Court, Returning Officer Rohit Singh admits that the token arrangement is enforced so that all the persons, who are available in the election room upto 3:00 PM, may wait in the election room for their turn to file their nomination forms. He also admits that all the officers involved in the work of election are trained.

7. Tokens were distributed by Assistant Returning Officer Smt.Preeti Nagendra, who in her turn, admits that the tokens were given as per rules of the election. In Paragraph No.3 Smt.Preeti Nagendra admits that after seeking all the papers from the election petitioner, token was given to him. She also admits that who is to be given token, is a matter on which training is imparted. Thus, it is submitted by Jitendra Kumar Awasthi that when the election petitioner was having a valid nomination form and was waiting for his turn, he could not have been thrown out of the election room in an illegal and arbitrary manner, a fact which is evident from the videography contained in Compact Disc-1. Though the election petitioner initially submits that he would also be pressing Ground-(d) under Section 100(1) of the Representation of the People Act, 1951, which deals with the four aspects, namely:-

“Section 100(1)(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act

or of any rules or orders made under this Act,[the High Court] shall declare the election of the returned candidate to be void.]”

but later on accepts that as far as the election petitioner is concerned, he will be concentrating only on Ground-(c) inasmuch as he has not **alleged** anything in regard to illegal acceptance of the nomination form of the Returned Candidate or of any corrupt practice committed in the interest of the Returned Candidate in regard to improper reception, **refusal** or rejection of any vote but would like to press that there is non-compliance of the provisions of the Constitution and of the Representation of the People Act, 1951, therefore, he will be pressing his election petition only on Ground-(c) of the grounds mentioned in Sub-Section (1) of Section 100 of the Representation of the People Act, 1951 **alongwith** non-compliance of the provisions of the Constitution.

8. In his written submissions, the election petitioner has though **taken** several grounds in regard to Shiv Prasad Ben, Smt, Keertan Vyas and Suresh Satnami but when he was informed that he has not **impleaded** them as party, the election petitioner fairly submitted that he has no **grievance** against them except the fact that the **Panchnama**, which was prepared in relation to his ouster from the election room, Shiv Prasad Ben was fraudulently made a witness whereas he was not present in the election room at the time of the incident. Thus, looking to the **fact** that Shiv Prasad Ben, Suresh Satnami and Smt.Keertan Vyas have **not** been impleaded as party-respondents, it is agreed & admitted that their **contest** to the said election is not under challenge and the election petitioner will

be restricting his argument to the main theme of this election i.e. non-acceptance of his nomination form by throwing him out of the election room in an illegal and arbitrary manner.

9. The election petitioner submits that Returning Officer Rohit Singh and Assistant Returning Officer Smt.Preeti Nagendra have accepted in Paragaph No.5 of their deposition that after 3:00 PM on the last date of filling up of the nomination form i.e. 9.11.2018, they were not entitled to give admission to any person in the election room but according to the election petitioner, Shiv Prasad Ben was given illegal entry after the due time. Similarly, at 3:04 PM, Rohit Singh was seen informing Smt.Keertan Vyas that her nomination form was sent outside the room under some confusion. There is allegation of manipulation in the Compact Disc, which according to the election petitioner, was subject to unauthorized editing with a view to suppress the actual conduct of Returning Officer Rohit Singh.

10. It is alleged by the election petitioner that in Question No.40, he had asked Rohit Singh that when he was the Chief Officer, he is responsible for editing in the video recording then the answer given was vague, which proves tempering with the video recording. It is alleged that the Compact Disc in regard to live video recording of the proceedings of the election room was tempered so as to illegally and malafidely restraining the election petitioner from contesting the election of the State Constituent Assembly. It is alleged that Suresh Satnami was also obliged by Returning Officer Rohit Singh for making him a witness against the present election petitioner. Thus, it is submitted that the election

petitioner has since been restrained from filling up of his nomination form, the election be declared as void.

11. Election Petitioner Jitendra Kumar Awasthi submits that Paragraph No.6.7.1 of the Returning Officer Handbook, 2018 draws a presumption in regard to validity of every nomination form unless and until it is proved otherwise. It provides that in case of doubt, the benefit of doubt should go to the concerned candidate and the nomination form should be treated to be valid. It provides that the Returning Officer should overlook small technical and clerical errors and should adopt an overall liberal attitude, which will be safe. It also provides that under Sub-section (4) of Section 36, no nomination form shall be rejected unless the error is not verified. The language deployed in Section 36(4) is as under:-

निर्वाचन अधिकारी की हेन्डबुक 2018 की धारा 6.7. विधिमान्यता की धारणा यह स्पष्ट करती है 6.7.1 एक धारणा है कि प्रत्येक नामांकन पत्र विधिमान्य है जब तक कि विरोध प्रथम दृष्टया स्पष्ट न हो या प्रस्तुत न किया गया है। नामांकन पत्र की विधिमान्यता के बारे में समुचित संदेह की दशा में ऐसे संदेह का लाभ संबंधित अभ्यर्थी को पहुंचना चाहिए और नामांकन पत्र को विधिमान्य ठहराया जाना चाहिए। याद रखें कि जब कभी किसी अभ्यर्थी के नामांकन पत्र को बिना समुचित कारण से अस्वीकृत किया जाता है तो इस तहत निर्वाचन की एक तरफ हटा सकते हैं चुनाव याचिका में। इसलिए रिटर्निंग ऑफिसर को छोटी-मोटी तकनीकी एवं लिपिकीय त्रुटियों पर कार्रवाई करने में तुलनात्मक रूप से उदार दृष्टिकोण अपनाना हमेशा सुरक्षित होता है। धारा 36 की उपधारा (4) शासनादेश अनुसार नामांकन पत्र को अस्वीकार नहीं किया जायगी जब तक कि त्रुटि की पुष्टि न हो।

12. The election petitioner submits that since he was carrying A4 size paper in his hand, which was admittedly seen by Smt.Preeti Nagendra Assistant Returning Officer on which she had given Token Slip No.4 and all the witnesses have accepted that the nomination form of the election petitioner was not checked, therefore, merely on the basis of the surmises and conjectures, throwing him out of the election room is illegal and arbitrary. He submits that as per Sub-section (4) of Section 36 of the Representation of the People Act, 1951, it is provided that the Returning Officer shall not reject any nomination form on the ground of any defect, which is not of a substantial character. He also submits that the Returning Officer is expected to conduct himself in terms of the provisions of the Representation of the People Act, 1951 and the Rules framed therein. He points out that since the conduct of the Returning Officer Rohit Singh was contrary to the provisions as contained in the Representation of the People Act, 1951 and the Rules framed therein, the non-acceptance of his nomination form and throwing him out of the election room is an act, which has prejudiced the election as he is a popular social worker in his Constituency and if he would have been permitted to contest election then he was sure of winning the election without any challenge from any of the other contesting candidates and in such premises, the election be declared as void on the Ground-(c) of Sub-Section (1) of Section 100 of the Representation of the People Act, 1951.

13. Reliance is placed by the election petitioner on the judgment of Hon'ble the Supreme Court in **Nandiesha Reddy versus Kavitha Mahesh (2011) 7 SCC 721** to point out that it is the duty of the Returning Officer to receive the nomination form, inspect it and if there is any shortcoming then point out such shortcoming and even after pointing

out of the shortcoming, if it is not removed then the question of rejection of nomination form will arise. He also places reliance on the judgment of Hon'ble the Supreme Court in **Sanjay Yadav versus Jitendra Kumar Awasthi decided on 9.1.2020** wherein Three Judges Bench of the Apex Court had refused to entertain **Special Leave to Appeal (C) Nos.29097/2019 & 29098/2019** filed on behalf of Returned Candidate Sanjay Yadav.

14. Learned counsel for the respondent on the other hand submits that on 22.1.2020, the High Court had framed following issues, namely,

“A- Whether the petitioner who was waiting for his number for submitting his nomination papers in the office on 9.11.2018 was illegally removed from the office by the Returning Officer?

B- Whether the result of the election in respect of the respondent, the Returned Candidate has been materially affected on the ground described in the election petition and as a result thereof, the election of the elected candidate (Shri Sanjay Yadav) deserves to be declared void?”

Vide order dated 21.9.2021, further issues were framed, namely:-

“C- Whether in absence of any allegation against the Returned Candidate in respect of

corrupt practice, the election petition is maintainable?

D- Whether the allegation levelled in the election petition is covered under Section 100 of the Representation of the People Act, 1951?"

15. It is submitted by learned counsel for the respondent that the election petitioner examined himself as Witness No.1 and in Paragraph No.13 admitted that the transcript of the Compact Disc is prepared by him, therefore, in absence of a valid certificate, such transcript is not permissible in the eyes of law. The election petition does not fulfill the requirement of Section 83(1)(c) of the Representation of the People Act, 1951, which provides that the election petition shall be signed by the election petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 but the present election petition is not signed by the election petitioner on every page.

16. Reliance is placed by learned counsel for the respondent on the judgment of Hon'ble the Supreme Court in **Aay Maken versus Adesh Kumar Gupta & Another (2013) 3 SCC 489** wherein it is held that failure to comply with the requirements of Section 81 of the Representation of the People Act, 1951 obligates the High Court to dismiss the election petition.

17. Learned counsel for the respondent submits that in Paragraph No.17, the election petitioner admits that he had not signed on every page of the documents annexed with the election petition, therefore, the same

is contrary to the provisions of Section 83(2) of the Representation of the People Act, 1951. In Paragraph No.21, the election petitioner admits that he did not appear with ten Proposers, which is the requirement of Paragraph 5.6.2 of Chapter-V of the Handbook and even the nomination form, which is enclosed by the election petitioner as Exhibit D/1, was incomplete and not signed by any witness and the proposer, which demonstrates that even at the time of filing of the election petition, the election petitioner did not possess the complete nomination form. The witnesses have not supported the case of the election petitioner and Rohit Singh specifically mentions this fact that the election petitioner had not submitted his nomination form, therefore, in absence of any incriminating material proved against the conduct of the Returning Officer, no indulgence should be shown in the matter.

18. Learned counsel for the respondent submits that the election petitioner has made several allegations against Returning Officer Rohit Singh in Paragraph Nos.7(a), 7(b), 7(c) & 7(f) but has not impleaded him as a party in individual capacity as is required under Section 82(b) of the Representation of the People Act, 1951, which specifically provides that any other candidate against whom the allegation of corrupt practice is made in the petition, is to be impleaded. The election petitioner has not made any allegation against the respondent Returned Candidate, therefore, the election petition is not covered under the provisions of Section 100 of the Representation of the People Act, 1951, is made out.

19. It is submitted by learned counsel for the respondent that no ground under Section 100(1)(c) of the Representation of the People Act, 1951 is made out as the election petitioner's nomination form was not accepted

and it is not a case of rejection, which is covered under Section 100(1)(c) of the Representation of the People Act, 1951. The election can be declared as void on the ground of corrupt practice as defined in Section 123 of the Representation of the People Act, 1951 but in the entire election petition, there is no allegation in respect of the corrupt practice mentioned under Section 123 of the Representation of the People Act, 1951, therefore, having failed to prove any corrupt practice, the election petition is liable to be dismissed.

20. To bolster his contention, learned counsel for the respondent places reliance on the judgments of Hon'ble the Supreme Court in **Hari Shanker Jain versus Sonia Gandhi (2001) 8 SCC 233**, **L.R.Shivaramagowda & Others versus T.M.Chandrashekar (Dead) By Lrs & Others (1999) 1 SCC 666**, **Shambhu Prasad Sharma versus Charandas Mahant & Others (2012) 11 SCC 390**, **Jitu Patnaik versus Sanatan Mohakud & Others (2012) 4 SCC 194**, **Virendra Kumar Saklecha versus Jagjiwan & Others (1972) 1 SCC 826**.

21. It is submitted by learned counsel for the respondent that the election petition can be filed under Section 81 of the Representation of the People Act, 1951 by any candidate at such election or any elector but the election petitioner has failed to prove that he was a candidate or any elector, therefore, this election petition is also barred by the provisions of Section 81 of the Representation of the People Act, 1951. In support of said contention, he places reliance on the judgment of Hon'ble the Supreme Court in **H.R.Devanna versus G.Puttaswamy Gowda & Others AIR 1999 SC 768** wherein it is held that any infirmity in compliance of Section 83 of the Representation of the People Act, 1951

would not entail dismissal of the election petition as under Section 86 of the Representation of the People Act, '1951, the only non-compliances of Sections 81, 82 & 117 of the Representation of the People Act, 1951 are the grounds for dismissal of the election petition.

22. After hearing learned counsel for the parties and going through the record, it is true that Election Petitioner Jitendra Kumar Awasthi deposed that he was given Token Slip No.4 after he had entered in the election room and this token slip was given by Assistant Returning Officer Smt.Preeti Nagendra. As per orders of the Returning Officer, the gates of the election room were closed at 3:00 PM. In Paragraph No.3, he deposes that after closing of the doors, the Returning officer had directed the Assistant Returning Officer to give token slips in the order in which the persons had entered to fill their nomination forms. It is thereafter mentioned that after a minute or two, somebody tried to slip in a document/photo under the gate and he was successful in this attempt when the Returning Officer had scolded that person. After ensuring that the photo was brought by the person belonging to the camp of Smt.Keertan Vyas, the Returning Officer started scolding her though Smt.Keertan Vyas was apologetic. The election petitioner had asked the Returning Officer to not to use inappropriate words while scolding a woman, as a result of which, the Returning Officer started scolding the Election Petitioner and had taken his mobile phone on the pretext that he was carrying out some recording but later on, his mobile phone was returned back to him.

23. The allegation of the election petitioner is that the Returning Officer was bent upon to insult him without any reason and throw him

out of the election room. He was thrown out of the election room without accepting his nomination form and that gives rise to the cause of action for filing the election petition. In cross-examination, this witness admits that except for verification, he has not signed on every page of the election petition.

24. The election petitioner admits in Paragraph No.16 of his cross-examination that he had even not signed on every page of the amended election petition. In Paragraph No.17, he admits that upto 3 O'clock on 9.11.2018, he was required to file his nomination form and respondent Sanjay Yadav had filed his nomination form prior to this time limit. He admits that his nomination form was not rejected. He admits that the nomination officer has been given discretion as to the acceptance of the nomination form of a particular person or to reject it. This witness admits that he had alleged that the Returning Officer was indulging in hooliganism (गुंडागर्दी).

25. In Paragraph No.21, the election petitioner admits that at the relevant time, no Advocate was accompanying him. He admits that at that time of filling up of the nomination form, Proposers are required. Number of such Proposers should be 10. In Paragraph No.22, he admits that Exhibit D/1 is the nomination form. In Paragraph No.23, he denies that he had not produced original documents of Exhibit D/1 before the Court. He admits that no recognised party had declared him as its candidate.

26. There is a suggestion that since the election petitioner had no Proposer, therefore, his nomination form could not have been accepted. Though the aforesaid suggestion is denied but the witness in Paragraph 24 admits that on Exhibit D/1 on 'A to A' part, his name is not mentioned.

He admits that as per the Enclosures 13, the affidavit alongwith Exhibit D/1 on 'B to B part' there are no signatures of any witness nor name of the witnesses or the date is mentioned. He admits that on the declaration, there are no signatures of Proposer Praye Lal Jadiya but only his name is mentioned. He admits that if entries are not filled by Proposer Pyare Lal Jadiya then the Advocate must be knowing this fact. In Paragraph No.25, he denies the suggestion that no Proposer had gone with him in the election room but in the very next sentence, he admits that if this fact is not mentioned in the election petition then he cannot give any reason for it.

27. In Paragraph No.25 itself, the election petitioner admits that after obtaining the token slip from the Assistant Returning Officer, the permission was given to approach the Returning Officer. In Paragraph No.26, he admits that the photographs of Proposers were not enclosed on the declaration. In Paragraph No.28, he deposes that he has no intimation whether the document Exhibit D/1 is in the prescribed format or not. In Paragraph No.29, he admits his closeness with Smt.Keertan Vyas. Smt.Keertan Vyas is also a resident of Bargi Lcgislative Assembly Arca.

28. Rakesh Mishra is the Contractor, who had videographed the proceedings in the area of election room so also inside the election room. He admits that he had subcontracted that work of recording the proceedings outside the election room to Manish Kori and for recording the proceeding inside the election room to Naresh Patel.

29. Manish Kori is examined as Petitioner Witness No.3. He admits that he was given a card for entering in the election area. This witness

deposes that if some proceedings were going on then they used to record otherwise they used to switch off the camera.

30. Naresh Patel is examined as Petitioner Witness No.4. There is no suggestion to him that there is tempering in recording of the cassette but this suggestion is denied.

31. The Deputy District Election Officer & Right To Information Officer, Jabalpur Shri Om Namah Shivai Arjariya is Petitioner Witness No.5. This witness admits that on payment of necessary fee, the Compact Disc of the recording was handed over to the election petitioner on 6.2.2019. The Compact Disc was prepared on 4.2.2019. The Compact Disc contains the signatures of Assistant Returning Officer Shri Chourasiya working under him and, therefore, he identified his signatures. The certificate provided under Section 65B of the Indian Evidence Act, 1872 is Exhibit C/25, which contains the signatures of PW.5 Shri Om Namah Shivai Arjariya.

32. The Assistant Returning Officer Smt. Preeti Nagendra is Petitioner Witness No.6. She admits that she had distributed token slips to all the candidates and had not taken anybody's side. These token slips are called as Parchi. She admits that since the gates of the election room were closed at 3:00 PM, she had only seen the Vidhik Nikshap Ki Raseed and had distributed the token slip to the person, who had shown her the receipt. In Paragraph No.2, she admits that the token slips are distributed so that every person may wait for his/her/their turn in the election room. She admits that the persons, who are given entry, can produce their nomination forms whenever their turn comes and their name is called. In Paragraph No.3, she deposes that she had seen the paper of Jitendra

Kumar Awasthi and had given him token slip for waiting. There is an elaborate cross-examination on this witness but the theme of the cross-examination is that the election petitioner was given entry in the election room after verifying the nomination form and the spirit of the argument is also the same that she had given entry to the election petitioner after verifying his nomination form and, therefore, there was no reason for throwing the election petitioner out of the election room.

33. However, the fact of the matter is that in Paragraph No.2 Smt.Preeti Nagendra has specifically deposed that she had only seen the Vidhik Nikshap Ki Raseed while giving the token slip and in Paragraph No.3, she has used the word 'Kagaj' which is singular and not plural. Even otherwise, this is corroborated from document Exhibit D/1 that the complete nomination form was not available with the election petitioner and it does not contain signatures of 10 Proposers as is the requirement of law.

34. In cross-examination of Smt.Preeti Nagendra, she denies the suggestion that she had included the forged witness. She also denies the fact that she had given unauthorized entry to Shiv Prasad Ben and Smt.Keertan Vyas. She also denies the suggestion that she had given unauthorized entry to the son of Smt.Keertan Vyas and her counsel or Shiv Prasad Ben or any other person. In reply to Question No.9, she admits that she had informed the person waiting outside that after 3 O'clock, no document will go inside. She also denies the suggestion that she carries any enmity against the election petitioner as she had registered a case against the election petitioner at the time of farmer's agitation. She also denies the suggestion that she is intermixed with respondent Sanjay

Yadav. In reply to Paragraph No.27, she clearly deposes that the election petitioner was causing obstruction in the government work and, therefore, he was thrown out of the election room. She states that he was shouting and causing obstruction in the Government work.

35. Shri Rohit Singh, the then Returning Officer, is also examined in support of the case of the election petitioner. He deposes that 9.11.2018 was the last date to fill the nomination forms. It was his responsibility to accept the nomination forms, which were to be presented to him by all the candidates, who had entered in the election room upto 3:00 PM possessing valid documents. In reply to the Question No.1, he categorically deposes that only such person is entitled to remain in the election room, who is a candidate himself or is a Proposer.

36. In reply to Paragraph No.2, Rohit Singh deposes that mere issuance of token slip is not a validation of right of a person to file the nomination form or to possess the nomination form. In reply to Paragraph No.3, he deposes that the token slips are given only to those who claim that they have come to fill the nomination forms. In the election room besides the Returning Officer, one authorized Assistant Returning Officer receives the nomination forms and there are two more Assistant Returning Officers, who distribute the token slips and/or verify the documents.

37. In reply to Paragraph No.3, Rohit Singh admits that he cannot depict the size of papers or the papers are related to which subject. In reply to Paragraph No.15, this witness has referred to Clause 5.7.2 of the Returning Officer Handbook, 2018 according to which the prescribed time to fill the nomination form is between 11:00 AM to 3:00 PM. He clearly deposes that the election petitioner had entered into unnecessary

debate and despite counselling when he did not stop then with a view to maintain proper arrangements in the election room and the sanctity, out of necessity, he was sent out of election room. In this regard, a Panchnama was prepared and it was forwarded by him to the District Election officer. He deposes that the election petitioner had not produced any nomination form either before him or before the Assistant Returning Officer within the prescribed time, therefore, there was no occasion for verification of the documents. He deposes that at the time of filling up of the nomination form, four things are required:- (1) Nomination Form (2) Affidavit (3) One Supporting Affidavit & (4) Receipt of Security Deposit. He admits that at the time of filling up of the nomination form, there is no need for any photograph.

38. In reply to Paragraph No.21, Rohit Singh admits that as per directives of the Election Commission, if there are any clerical errors then they are notified to the concerned candidate and he is directed to correct them because as per the directives of the Election Commission, without there being any solid reason, the election being an important subject, the nomination form cannot be rejected on account of clerical errors. He deposes that at 6:20 PM, he was taking affidavit from the concerned candidate. After taking forms at 3:00 PM, number date and time is mentioned at every form.

39. In reply to Paragraph No.22, Rohit Singh deposes that issuance of token slip does not mean that at the relevant time that person holding the token slip was having the nomination form. This witness exhibited the Panchnama Exhibit P/26 alongwith 4 Annexures P/26(1), P/26(2), P/26(3). In the form of Question No.26, the election petitioner has

himself suggested to the Returning Officer that a candidate is permitted to enter in the Office of the Returning Officer with 5 persons. These persons can enter in the election room on the basis of the slip given by the Returning Officer. Thus, it is evident that only 5 persons were entitled to enter into the election room whereas as per Clause 5.6.1 of the Returning Officer Handbook, 2018, any candidate filling the nomination form is required to have 10 Electors from the concerned election area as Proposers.

40. The election petitioner asked Rohit Singh that at 3:08 PM, Rohit Singh had asked Smt.Preeti Nagendra to prepare a Panchnama against him. Rohit Singh replied that he had directed Rohit Verma to prepare the Panchnama and after viewing the Compact Disc to refresh his memories, he confirmed that the directions were given to the Tahsildar and not to Smt.Preeti Nagendra. The Election Petitioner admits that he had asked his question on incorrect basis. Rohit Singh confirms the contents of the Panchnama Exhibit P/26(1) and deposes that after it was confirmed that Jitendra Kumar Awasthi was not having a nomination form and was arguing on the basis of other persons then the authorities were asked to prepare the Panchnama (Question No.32 and its Answer). There is a suggestion that the Panchnama was not prepared on the spot and was prepared subsequently and that suggestion was also denied.

41. In reply to Question No.44, the Returning Officer replied that on the basis of the report of the Assistant Returning Officer as contained in Exhibit P/26(c), Exhibit P/26(2)(c) and Exhibit P/26(3)(c), he wrote to the election officer that the election petitioner was not having requisite documents and he further deposes that Smt.Preeti Nagendra had informed

him that on the basis of the Security Deposit Receipt, she had given entry to the election petitioner in the election room. As per Compact Disc, Jitendra Kumar Awasthi was seen telling the police personnel available on the gate that his documents be allowed to enter in the election room. Smt. Preeti Nagendra had informed him that except for one person, the others were having nomination forms. This thing is mentioned in the joint report also. At 15.05.35 hours, as per Compact Disc, Jitendra Kumar Awasthi is seen saying that when guard had sent back his man then what will he do? At 15.07.56 hours, Jitendra Kumar Awasthi is seen saying that when you have returned my person from outside without taking documents then what will he do? This utterance in 15.08.49 hours is proof that the election petitioner was not having the nomination form. It is further deposed that the Assistant Returning Officer Rohit Verma asked him thrice where is his nomination form when the election petitioner said that his nomination form was not permitted to come inside, which is an evidence that he was not having the nomination form.

42. In a specific Question No.45 put by the election petitioner to the Returning Officer that why these facts were not mentioned in his report to the District Election Officer, the Returning Officer replied that as per the joint report of the Assistant Returning Officer(s) and the Returning Officer contained in Exhibit P/26(c), it is evident that the candidate was not having nomination form till he left the election room. The suggestion in regard to tempering of the Compact Disc is denied in reply to Question No.54. This witness also deposes that all the forms were taken upto 3:00 PM and no form was accepted after 3:00 PM. Rohit Singh was asked that the Letter Exhibit P/26(3)(c) was prepared two days' back is denied by this witness Rohit Singh and again it is reiterated that the election

petitioner was not having the relevant documents when he was sent out. In reply to Question No.105, the Returning Officer categorically replies that the form of Shiv Prasad Ben was taken at 2:56 PM. In reply to the earlier question, he had pointed out that the nomination form was given by Shiv Prasad Ben on 9.11.2018 at 2:56 PM and was marked as Exhibit P/30(c). In cross-examination, this witness admits that when he got summoned to give evidence then he was neither given copy of the election petition nor the documents enclosed alongwith it. He further admits that he has no knowledge about the personal allegation made against him in the election petition. He admits that the election petitioner did not deposit any nomination form till he was in the election room. He admits that the election petitioner was not having any nomination form and accepting the Panchnama even the Central Observer and the District Election Officer had filed a complaint given by the election petitioner.

43. The election petitioner examined one Ashish Mishra S/o. Shri. Shyama Bhaiya Mishra, Director of DIMS Lab as Petitioner Witness No.8. In examination-in-chief, this witness admits that since he was behind and the election petitioner and his Proposer Pyare Lal Jadiya had entered in the election room at about 2:59 PM, therefore, he was not given entry in the election room as the gates were closed at 3:00 PM. After 10-15 minutes, the election petitioner had come out of the election room and had addressed the media when he discovered that the election petitioner was not allowed to fill the form. In cross-examination, he admits that he was accompanied by the election petitioner. He admits that he has not brought any authorization letter to the Court. He could not give details of other persons, whose names were mentioned in the authorization letter. In reply to Question No.6, he admits that the

authorization letter, which was given to him, was on A4 size paper. He had neither checked the nomination form of the election petitioner nor it contains his signatures. In reply to Paragraph No.7, he admits that he cannot say that whether Pyare Lal Jadiya had signed on the nomination form or not because the form was with the election petitioner. In cross-examination, he admits that he was not made a Proposer and since he does not have any relationship with Pyare Lal Jadiya in regard to “लिखापट्टी”, therefore, he does not recognise his signatures.

44. Respondent Sanjay Yadav did not adduce any evidence in support of his case.

45. All four issues, namely, whether the election petitioner was illegally removed from the Office of the Returning Officer and the said removal materially affected the result of the election of the returned candidate are intertwined and similarly, Issue No.C whether in absence of any allegation against the Returned Candidate as regards the corrupt practice, the election petition is maintainable and whether the allegation levelled in the election petition is covered under Section 100 of the Representation of the People Act, 1951 are to be examined in the light of the law on which reliance is placed by the rival parties.

46. Reliance placed by the election petitioner on the judgment of Hon'ble the Supreme Court in **Nandiesha Reddy versus Kavitha Mahesh (supra)** wherein it is held that the person, who presented his nomination papers, within time but the Returning Officer refused to receive the same on the ground of some defect, is a “candidate” entitled to file election petition in terms of the provisions as contained in Section 81 and Section 33(4) of the Representation of the People Act, 1951. The

Returning Officer is duty bound to receive nomination papers together with Annexures presented before him. The defect, if any, should be allowed to be rectified. If a person fails to rectify the defect then only the question of rejection of nomination papers would arise. It is further held that a candidate not set up by any recognised political party, the nomination paper is required to be subscribed by 10 Electors as required by first proviso to Section 33(1) of the Representation of the People Act, 1951. His averment is to be assumed to be true at preliminary stage of challenge to maintainability of the election petition.

47. Section 33(1) of the Representation of the People Act, 1951 provides that on or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency.

48. Thus, it is apparent that the nomination form was to be delivered to the Returning Officer upto 3:00 PM. As per first proviso to Section 33(1) of the Representation of the People Act, 1951, since admittedly the election petitioner was not set up by a recognised political party, he was required to get his nomination form subscribed by 10 Proposers being Electors of the Constituency. The election petitioner has enclosed his

nomination form as Annexure P/4, which has been marked as Exhibit D/1 on 28.10.2021 and admittedly it does not contain signatures of 10 Proposers. On Page-1 of the nomination form, necessary details have been filled. As per Enclosure 13 (Chapter-V Paragraph-5.5.2), which is a format of the additional affidavit to be filled by the election petitioner, there are no signatures of the election petitioner at the designated place marked as "B to B" while infact all the necessary details from "C to C" "D to D" & "Y to Y" have been left blank. There is a declaration form to be filled by the candidate/his election agent/proposer at the time of submission of the photograph of the candidate although it contains the name of Pyare Lal Jadiya but his signatures are missing.

49. Thus, it is evident that the election petitioner was not having duly filled and complete nomination form as per the requirement of Section 33(1) of the Representation of the People Act, 1951 and admittedly it was not submitted before the authorities upto 3:00 PM, therefore the law laid down in **Nandiesha Reddy versus Kavitha Mahesh (supra)** will not be applicable to the facts & circumstances of the present case on two counts, firstly, the candidate is a person, who presented his nomination form within time but the Returning Officer refused to receive the same on the ground of some defect is not made out and secondly in absence of signatures of 10 Electors from the Constituency as Proposers means that the election petitioner was not duly nominated to submit his nomination form.

50. In the present case, no nomination papers were presented upto 3:00 PM as is clear from the evidence of the Returning Officer Rohit Singh. The election petitioner was not having complete nomination form

inasmuch as he admits that only five persons were allowed to be given entry in the election room on the basis of a slip issued in this behalf by the authorities but the requirement of law is to deposit a form in case of a candidate not set up by any recognised political party, which is duly subscribed by 10 Electors. When the nomination form filed by the election petitioner as Exhibit D/1 is examined then it is evident that the nomination form does not contain the signatures of 10 Proposes. The defect could not have been rectified even if it is presumed for the sake of argument that the election petitioner was possessing the nomination form as it was incomplete in all respects and was not deposited with the authorities within the prescribed time.

51. It is not the case of the election petitioner that he presented the nomination form in time together with Annexures and the Returning Officer refused to receive the nomination form on account of any defect while infact the present case is totally distinguishable from the facts of **Nandiesha Reddy versus Kavitha Mahesh (supra)** inasmuch as neither the nomination form was complete as is evident from Exhibit D/1 as it did not contain the signatures of 10 Proposers, which is the mandatory requirement as per Section 33(1) of the Representation of the People Act, 1951 nor it was presented upto 3:00 PM or the election petitioner had shown any willingness to present the same when he was escorted outside the election room.

52. A careful perusal of the Compact Disc produced by the election petitioner reveals that nowhere the election petitioner is seen saying to the Returning Officer or his Assistants to first take his nomination form and then allow him to go out of the election room. It is only outside the

election room, he made utterances to the media that he was thrown out without accepting his nomination form. Though it is not material but relevant that in the Compact Disc prepared outside the election room where the election petitioner is prominently shown, he did not make any attempt even to show his nomination form to the media personnel whom he was addressing, which would have been a proof of his possession of a complete nomination form and also a proof of bonafide interest in contesting the election, therefore, the pronouncement of law rendered by the Apex Court in **Nandiesha Reddy versus Kavitha Mahesh (supra)** is not applicable to the facts & circumstances of the present case.

53. Reliance is placed by learned counsel for the respondent on the judgments of Hon'ble the Supreme Court in **Hari Shanker Jain versus Sonia Gandhi (supra)**, **L.R.Shivaramagowda & Others versus T.M.Chandrashekar (Dead) By Lrs & Others (supra)**, **Shambhu Prasad Sharma versus Charandas Mahant & Others ((supra)**, **Jitu Patnaik versus Sanatan Mohakud & Others (supra)** and **Virendra Kumar Saklecha versus Jagjiwan & Others (supra)** to contend that unless the corrupt practice is alleged, the election cannot be set aside.

54. In the present case, it is admitted and not disputed by the election petitioner himself that there was no corrupt practice as far as respondent Sanjay Yadav is concerned. The election petitioner is not alleging any corrupt practice against respondent Sanjay Yadav but is only submitting that because of denial of the Returning Officer to accept his nomination form, the result of the election has been materially affected. Thus, it is evident that the bone of contention is restricted only to denial of the Returning Officer to accept the nomination form and to answer this, as

has been discussed above, the election petitioner was required to prove that he was in possession of a valid nomination form completed in all respect. This nomination form was having substantial compliance and was within the prescribed format.

55. In **Shambhu Prasad Sharma versus Charandas Mahant & Others (supra)**, the Apex Court has held that the substantial compliance with prescribed format is enough for acceptance of nomination form. As per law laid down by Hon'ble the Supreme Court in **Union of India versus Association for Democratic Reforms (2002) 5 SCC 294** and the directions issued by the Election Commission to make its disclosure of any dues outstanding against the candidate towards any financial institution or Government compulsory, by filing an affidavit, then non-filing of affidavit may render the nomination paper *non est*. The Apex Court held that when affidavit is filed but its format is defective then acceptance or rejection depends upon whether the defect was of substantial character. The format of nomination paper is substantially complied with then every departure from prescribed format cannot be a ground for rejection thereof.

56. In the present case, as discussed above, the affidavit did not contain signatures of the candidate. The material details, which were to be filled, were left blank, which demonstrates that the nomination paper was incomplete. Coupled with the fact that the nomination form was not submitted and no attempt is seen to submit such nomination form besides it being incomplete in all respects and not being filed within the prescribed time, it cannot be said that the nomination form was tendered to the authorities and the authorities were required to scrutinize it.

57. Section 100(1)(c) of the Representation of the People Act, 1951 deals with improper rejection of a nomination form. A nomination form not tendered cannot be subject to either acceptance or rejection. Even if non-acceptance is hypothetically extended to mean improper rejection then also to prove his case within the parameters of Section 100(1)(c) of the Representation of the People Act, 1951, the election petitioner is required to demonstrate that he had complete nomination form in terms of the proviso below Section 31(1) of the Representation of the People Act, 1951 and it was tendered within the time prescribed under Section 31(1).

58. Since both these aspects are missing, therefore, it cannot be said that the nomination form was improperly rejected. There is no evidence of any corrupt practice against Returned Candidate Sanjay Yadav. As the election petitioner has accepted that there was no corrupt practice on the part of the Returned Candidate, therefore, when there are no allegations that the Returning Officer refused to accept the nomination at the instance of the Returned Candidate or to favour the Returned Candidate and as discussed above, the Returning Officer was not made a party in his individual capacity to permit him to rebut the personal allegation, in my opinion, none of the issues framed are made out.

59. The election petitioner admittedly did not submit his nomination form upto the prescribed time and admittedly he was removed from the Office by the Returning Officer after 3:00 PM, therefore, Issue No.A as to whether the election petitioner was illegally removed by the Returning Officer is answered in negative.

60. In the State Assembly Election for the Constituent Assembly No.96, Bargi Vidhan Sabha for which the voting took place on

28.11.2018 and the results were declared on 11.12.2018, the total number of voters were 220702, Returned Candidate Sanjay Yadav got 86901 votes and 14 other eligible candidates contesting the election got 83365 votes and 3091 voters selected Option "None Of The Above", therefore, in the light of the above-mentioned statistics, it cannot be said that the absence of the election petitioner in the election fray could have materially affected the election of the Returned Candidate Sanjay Yadav requiring it to be declared as void, Issue No.B too needs to be answered against the election petitioner.

61. Issue No.C has been answered by the election petitioner himself that he has not made any allegation of corrupt practice yet the election petition could have been maintainable in terms of Ground-C provided in Section 100(1) of the Representation of the People Act, 1951. Thus, the election petition can be held to be maintainable even in absence of allegation of corrupt practice on the said ground alone but as discussed above, since that ground contained in Clause-C of Section 100(1) of the Representation of the People Act, 1951 too is not made out, therefore, the Issue No.D is also answered against the election petitioner.

62. Resultantly, Election Petition No.21/2019 filed by Election Petitioner Jitendra Kumar Awasthi against Returned Candidate Sanjay Yadav fails and is dismissed.

63. Parties are directed to bear their own cost as incurred in Election Petition No.21/2019.

64. Record, if any, be sent back forthwith.

Sd/-
(VIVEK AGRAWAL)
Judge.

By order,
Sd/-
(AMIT KUMAR)
Secretary,
Election Commission of India.